CHAPTER 2

INSURANCE GROUP

Authority

N.J.S.A. 17:1–8.1, 17:1–15e, 17:17–1 et seq., 17B:17–1 et seq., 34:15–77 and 54:18A–1 et seq.

Source and Effective Date

R.2001 d.6, effective November 30, 2000.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 2, Insurance Group, expires on May 29, 2006. See: 37 N.J.R. 2285(a).

Chapter Historical Note

Chapter 2, Insurance Group, was adopted and became effective prior to September 1, 1969.

Subchapter 10, Casualty Insurers, Personal Lines Insurance, was adopted as new rules by R.1970 d.71, effective June 26, 1970.

Subchapter 11, Rules Governing Advertisement of Health Insurance, was adopted as new rules by R.1972 d.95, effective May 16, 1972. See: 4 N.J.R. 69(b), 4 N.J.R. 128(d).

Subchapter 12, Mass Marketing of Property and Liability Insurance, was adopted as new rules by R.1974 d.271, effective September 25, 1974. See: 6 N.J.R. 313(d), 6 N.J.R. 408(a).

Subchapter 13, Group Coverage Discontinuance and Replacement, was adopted as new rules by R.1974 d.272, effective February 1, 1975. See: 5 N.J.R. 342(c), 6 N.J.R. 409(a).

Subchapter 17, Unfair Claims Settlement Practices, was adopted as new rules by R.1981 d.407, effective November 2, 1981, operative January 15, 1982. See: 12 N.J.R. 600(f), 13 N.J.R. 774(c), 13 N.J.R. 894(a).

Subchapter 18, Readable Policies, was adopted as new rules by R.1982 d.410, effective November 15, 1982. See: 14 N.J.R. 967(a), 14 N.J.R. 1307(c).

Subchapter 10, Casualty Insurers, Personal Lines Insurance, was repealed by R.1985 d.71, effective February 19, 1985. See: 16 N.J.R. 2920(a), 17 N.J.R. 458(b).

Subchapter 23, Advertisement of Life Insurance and Annuities, was adopted as new rules by R.1985 d.600, effective November 18, 1985. See: 16 N.J.R. 2626(a), 17 N.J.R. 2776(a).

Subchapter 19, Approval of Insurance Schools and Company Training Programs, was adopted as new rules by R.1985 d.608, effective December 2, 1985. See: 16 N.J.R. 2920(b), 17 N.J.R. 2901(b).

Subchapter 1, Educational Requirements for Licensing, was repealed, and Subchapter 19, Approval of Insurance Schools and Company Training Programs, was repealed by R.1989 d.192, effective April 3, 1989. See: 20 N.J.R. 1152(a), 21 N.J.R. 899(b).

Subchapter 26, Annual Audited Financial Reports, was adopted as new rules by R.1989 d.612, effective December 18, 1989. See: 21 N.J.R. 3054(a), 21 N.J.R. 3919(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, Insurance Group, was readopted as R.1991 d.4, effective November 30, 1990, and Subchapter 8, Mid–Term Substitution by Mortgagor of Insurance Policies, was repealed, effective January 7, 1991, by R.1991 d.4. See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).

Subchapter 32, Custodial Deposits, was adopted as new rules by R.1991 d.14, effective January 7, 1991. See: 22 N.J.R. 2640(a), 23 N.J.R. 105(a).

Subchapter 31, Manner of Determining Premium for Perpetual Homeowners Insurance, was adopted as new rules by R.1991 d.139, effective March 18, 1991. See: 22 N.J.R. 601(a), 23 N.J.R. 860(b).

Subchapter 29, Orderly Withdrawal of Insurance Business, was adopted as new rules by R.1991 d.262, effective May 20, 1991. See: 23 N.J.R. 15(b), 23 N.J.R. 1673(a).

Subchapter 35, Relief from Insurer Obligations Under the Fair Automobile Insurance Reform Act of 1990, was adopted as new rules by R.1991 d.519, effective October 21, 1991. See: 23 N.J.R. 660(a), 23 N.J.R. 3166(a).

Subchapter 27, Determination of Insurers in a Hazardous Financial Condition, was adopted as new rules by R.1992 d.292, effective July 6, 1992. See: 23 N.J.R. 3197(a), 24 N.J.R. 2456(a).

Subchapter 33, Workers' Compensation Self–Insurance, was adopted as new rules by R.1993 d.157, effective April 5, 1993. See: 24 N.J.R. 1944(a), 24 N.J.R. 2708(b), 25 N.J.R. 1526(a).

Subchapter 28, Credit for Reinsurance, was adopted as emergency new rules by R.1993 d.448, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4289(a). The provisions of R.1993 d.448 were readopted as R.1993 d.557, effective October 15, 1993. See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

Subchapter 36, Risk Retention Groups and Purchasing Groups, was adopted as emergency new rules by R.1993 d.449, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4298(a). The provisions of R.1993 d.449 were readopted as R.1993 d.558, effective October 15, 1993. See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a).

Subchapter 37, Producer–Controlled Insurers, was adopted as emergency new rules by R.1993 d.450, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4304(a). The provisions of R.1993 d.450 were readopted as R.1993 d.559, effective October 15, 1993. See: 25 N.J.R. 4304(a), 25 N.J.R. 5202(a).

Subchapter 38, Increase in Property and Casualty Capital and Surplus Requirements, was adopted as emergency new rules by R.1993 d.451, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4306(a). The provisions of R.1993 d.451 were readopted as R.1993 d.560, effective October 15, 1993. See: 25 N.J.R. 4306(a), 25 N.J.R. 5204(a).

Subchapter 39, Increase in Capital and Surplus Requirements for Life and Health Insurers, was adopted as emergency new rules by R.1993 d.452, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4309(a). The provisions of R.1993 d.452 were readopted as R.1993 d.561, effective October 15, 1993. See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).

Subchapter 40, Life, Health and Annuity Reinsurance Agreements, was adopted as emergency new rules by R.1993 d.453, effective August 16, 1993, expires October 15, 1993. See: 25 N.J.R. 4314(a). The provisions of R.1993 d.453 were readopted as R.1993 d.562, effective October 15, 1993. See: 25 N.J.R. 4314(a), 25 N.J.R. 5212(a).

Subchapter 34, Surplus Lines Insurance: Allocation of Premium Tax and Surcharge, was adopted as new rules by R.1993 d.582, effective November 15, 1993. See: 25 N.J.R. 1826(a), 25 N.J.R. 5194(a).

Petition for Rulemaking. See: 26 N.J.R. 2487(b).

Subchapter 41, Windstorm Market Assistance Program, was adopted as new rules by R.1995 d.53, effective January 17, 1995. See: 26 N.J.R. 4304(a), 27 N.J.R. 364(a).

Subchapter 1, Admission Requirements for Foreign and Alien Life and Health Insurers, was adopted as new rules by R.1995 d.80, effective February 6, 1995. See: 26 N.J.R. 4586(a), 27 N.J.R. 559(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Insurance Group, was readopted as R.1996 d.3, effective November 30, 1995, with amendments effective January 2, 1996. See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, Insurance Group, was readopted as R.2001 d.6, effective November 30, 2000. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. ADMISSION REQUIREMENTS FOR FOREIGN AND ALIEN LIFE AND HEALTH INSURERS

11:2–1.1 Purpose

This subchapter establishes the procedures, requirements and standards which govern the application of foreign and alien insurers engaged in the business of life and health insurance for a certificate of authority to transact the business of insurance in this State.

11:2–1.2 Scope

This subchapter applies to all foreign and alien insurers that apply for a certificate of authority to transact the business of life and health insurance in this State. The filing requirements contained in this subchapter shall not apply to the continuation, renewal or timely reinstatement of existing certificates of authority except where the Commissioner, pursuant to law, shall otherwise require.

11:2–1.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the Department of Banking and Insurance of this State.

"Committee on Admissions" means the advisory committee within the Department appointed by the Commissioner to aid in the review of applications for admission to transact the business of insurance in this State and to render to the Commissioner recommendations as to the disposition of such applications.

"Department" means the Department of Banking and Insurance of this State.

"IRIS" means the NAIC Insurance Regulatory Information System.

"NAIC" means National Association of Insurance Commissioners.

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
Amended "Commissioner" and "Department".

11:2–1.4 General eligibility requirements

(a) In order for a foreign or alien insurer to be admitted as a life and health insurer in this State, the requirements in this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1. The applicant shall satisfy the Commissioner that its condition or methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a hazardous financial condition exists, the factors identified in N.J.A.C. 11:2–27.3 shall be considered. A hazardous financial condition shall exist when those factors indicate, either singly or in combination of two or more, that the financial condition of any applicant which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be hazardous to the policyholders, stockholders, claimants, creditors, or the general public. The Commissioner shall further consider any other fact or circumstance that indicates that an insurer's operations may be hazardous.

2. The applicant shall satisfy at least the minimum capital and surplus requirements of a similar domestic insurer of this State for all lines of insurance that it is authorized to write pursuant to the certificate of authority issued by its place of domicile, whether or not the applicant desires to transact any of those lines of insurance in this State, subject to the following:

i. In determining whether an applicant meets the minimum capital and surplus requirements, the following shall be deducted from unassigned funds:

(1) The statement value of any and all special deposits not held for the protection of all policyholders;

(2) Reserves and losses reinsured with companies not authorized in New Jersey, accredited as reinsurers in New Jersey, or otherwise in compliance with N.J.S.A. 17:51B–1 et seq., net of any offsets;

(3) The statement value for the portion of assets held in excess of investment limitations for life and health insurers pursuant to N.J.S.A. 17B:20–1 et seq.;

(4) Reserve shortfalls caused by the company holding reserves weaker than those mandated by N.J.S.A. 17B:19, or such other standards provided by administrative rule, actuarial guidelines, or determined necessary by actuarial analysis;

(5) The excess of the statement value over the market value of bonds held by the applicant; and

(6) Off balance sheet guarantees and contingent liabilities for which the company has not previously established a liability in an appropriate amount.

ii. Capital and surplus requirements may be reduced to the level required for the kinds of insurance actually being marketed if the applicant:

(1) Does not transact one or more of the kinds of insurance contained in the certificate of authority issued by its state or country of domicile; and

(2) Submits a resolution by its board of directors stating that it will refrain from transacting the kind(s) of insurance permitted by the certificate of authority issued by its state or country of domicile.

3. An applicant which has total adjusted capital of less than its company action level risk-based capital or which has otherwise triggered a company action level event, as these terms are defined in N.J.A.C. 11:2–39, as of December 31 of the preceding calendar year, shall not be considered for admission until the applicant's status has improved.

4. The applicant shall be deemed to have its application deferred if any one of the following conditions exist:

i. An applicant which has failed four or more IRIS tests shall have its application deferred until it has demonstrated to the Commissioner and its place of domicile that the IRIS test results are not indicative of a financial condition that may be hazardous to the policyholders, stockholders, claimants, creditors or the general public; or

i. A schedule listing the following:

(1) All jurisdictions in which the applicant has applied for authorization to transact the business of insurance during the preceding 10 years and the dates and results of such applications; and

(2) If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings, and determinations related thereto;

ii. A description of the applicant's present business plan(s) for conducting an insurance business, including, but not limited to:

(1) Geographical areas in which business is being written;

(2) The types of insurance to be written;

(3) Marketing methods;

(4) A summary of the methods of establishing premium rates;

(5) Five-year financial projections including premium volume and income by line of business; capital, surplus and risk-based capital levels; and

(6) A description of agency systems, including any managing general agency contracts;

iii. A description of the applicant's proposed plan for conducting an insurance business in this State, including, but not limited to:

(1) The geographical area in which business is intended to be done;

(2) The types of insurance intended to be written;

(3) Proposed marketing methods;

(4) Proposed methods for the establishment of premium rates;

(5) A five-year forecast of anticipated premiums in this State by line of business; and

(6) Proposed agency systems;

iv. A summary of the applicant's reinsurance program on assumed business, indicating the name of the ceding insurers, retentions, maximum risks, types of business, types of agreements, and any other information which may, in the opinion of the Department, be relevant to this part of the applicant's operations. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant; and

v. A summary of the applicant's reinsurance program on ceded business, indicating the name of the reinsurers, retentions, maximum risks, types of business, types of contracts, and any other information which may, in the opinion of the Department, be relevant to this part of the applicant's operations. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant;

16. If the applicant is a foreign insurer, evidence of a certificate of deposit, certified by the commissioner of the place of domicile, confirming the deposit made therewith and that such deposit satisfies the requirements of the insurer's place of domicile;

17. If a United States branch of an alien insurer, the applicant shall provide the Department with:

i. A certificate of deposit certified by its insurance commissioner showing the amount in trust for policyholders which shall be sufficient to satisfy the requirements of N.J.S.A. 17B:22–3;

ii. A certified copy of power of attorney in favor of its United States manager; and

iii. A certified copy of a deed of trust to the trustee of the applicant's funds; and

18. If the applicant is an alien insurer, a statement of trusteed surplus in the United States.

(b) Applicants shall file the final application within 60 days of notice from the Department that the applicant is eligible for admission.

(c) In lieu of the procedures set forth in N.J.A.C. 11:2–1.5 and 1.6, an applicant may file an application for admission utilizing the applicable form of the Uniform Certificate of Authority Application (UCAA) form and procedures adopted by the NAIC. The UCAA is available on the NAIC website at www.naic.org.

1. An applicant utilizing the UCAA form shall file the information required in the UCAA with the addition of the documentation set forth in N.J.A.C. 11:2–1.5(a)3, 1.5(a)7 and 1.6(a)3 and shall pay the fee set forth at N.J.A.C. 11:2–1.6(a)10.

2. An applicant utilizing the UCAA procedures shall continue to be required to satisfy the eligibility requirements set forth in N.J.A.C. 11:2–1.4.

Amended by R.2003 d.209, effective May 19, 2003.
See: 35 N.J.R. 66(a), 35 N.J.R. 2182(a).
Rewrote the section.

11:2–1.7 Review procedures; appeals

(a) Upon receipt of a final application, the Commissioner shall conduct a thorough background investigation and review which shall include the information contained in N.J.A.C. 11:2–1.4, 1.5 and 1.6, inquiries regarding claims settlement practices and any other information which, in the opinion of the Commissioner, may be necessary to make an appropriate decision regarding the application.

(b) The applicant shall ensure that all filings submitted to the Department are current. Any amendment, changes or replacements to documents on file shall be timely updated.

(c) Applications accepted after November 15 of each year shall not be reviewed until the next annual statement becomes available and is received for review. The review of such applications shall begin after receipt by the Department of the latest annual statement and after the latest financial information of the applicant is available in electronic format from the NAIC database.

(d) Before a decision on an application is made, the Department may request from an applicant, in writing, any additional information it may require. Failure by an applicant to respond to written inquiries by the Department within 45 days shall result in an application being deemed withdrawn.

(e) Application reviews shall be conducted by the Department on a monthly basis. The Department's Committee on Admissions shall make a recommendation to the Commissioner concerning each application which has been reviewed. The Commissioner shall consider the recommendation and make his or her decision on the application within 10 working days from receipt of the recommendation. Written notice of the decision shall be mailed to the applicant by certified mail within 10 working days of the date of the Commissioner's decision.

(f) When the Commissioner rejects an application, the notice of rejection shall include a statement specifying the reasons for the rejection. Such notice shall inform the applicant of the right:

1. To request an informal Departmental review of the rejection within 20 days of receipt of the notice of rejection; and

2. To provide the Department with a written statement, including supporting documentation, if any, disputing with specificity the reasons for rejection within 30 days of the receipt of the notice of rejection.

(g) Upon timely receipt of the request for Departmental review and the written statement of the applicant, if any, the Department shall promptly review the application, attached documents, Department records and the written statement. In appropriate circumstances, the Commissioner may provide the applicant with an opportunity to present its position in person. If, after reviewing the record, the Commissioner determines that the applicant has failed to qualify, the Commissioner shall promptly so inform the applicant.

(h) Where an application has been rejected, the applicant shall not be eligible to reapply until there is one full year or more of acceptable experience.

Amended by R.2003 d.209, effective May 19, 2003.
See: 35 N.J.R. 66(a), 35 N.J.R. 2182(a).
Rewrote (c); in (d), substituted "shall result in an application being deemed withdrawn" for "may be considered grounds for rejection of the application".

11:2–1.8 Severability

If any provisions of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Recodified from N.J.A.C. 11:2–1.9 by R.2003 d. 209, effective May 19, 2003.
See: 35 N.J.R. 66(a), 35 N.J.R. 2182(a).
Former N.J.A.C. 11:2–1.8, Compliance, repealed.

SUBCHAPTER 2. INSURANCE ON FINANCED AUTOMOBILES

11:2–2.1 Return of unearned premiums

(a) N.J.S.A. 17:16D–14(a) requires that whenever a financial insurance contract is cancelled, the insurer on notice of such financing shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(b) Upon the effective date of this regulation, such unearned premiums shall be remitted by insurers to finance companies not later than 60 days after the effective date of cancellation, or 60 days after the completion of any payroll audit necessary to determine the amount of premium earned while the policy was in force. Such audit shall be performed within 30 days after the effective date of cancellation.

As amended, R.1972 d.167, effective August 25, 1972.
See: 4 N.J.R. 103(d), 4 N.J.R. 221(a).

11:2–3.24 Existing insurance; choice of insurer

When credit life insurance or credit accident and health insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him, or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this State.

Recodified from 11:2–3.18 by R.1996 d.206, effective May 20, 1996.
See: 27 N.J.R. 3676(a), 28 N.J.R. 2621(a).

Case Notes

Coborrower failed to produce sufficient direct evidence to raise genuine issue of material fact concerning the validity of primary borrower's consent; charge not proved unconscionable. Jefferson Loan Co., Inc. v. Livesay, 175 N.J.Super. 470, 417 A.2d 1164 (Dist.Ct. 1980).

11:2–3.25 Separability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Recodified from 11:2–3.19 by R.1996 d.206, effective May 20, 1996.
See: 27 N.J.R. 3676(a), 28 N.J.R. 2621(a).

11:2–3.26 Effect on previously filed forms and rates

Forms and rates which have been filed by the Commissioner pursuant to N.J.S.A. 17B:29–7 and 8 which are not in compliance with these rules shall be deemed withdrawn as of November 20, 1996.

New Rule, R.1996 d.206, effective May 20, 1996.
See: 27 N.J.R. 3676(a), 28 N.J.R. 2621(a).

APPENDIX TO SUBCHAPTER 3

CREDIT ACCIDENT AND HEALTH INSURANCE

SINGLE PREMIUM RATES PER $100 OF INITIAL INSURED INDEBTEDNESS

7-Days Retroactive—Col. I

Number of Equal Monthly Installments	Single Premium Rate per $100
6	1.68
12	1.99
24	2.33
36	2.58
48	2.77
60	2.91
72	3.02
84	3.14
96	3.25
108	3.34
120	3.44

14-Days Retroactive—Col. I

Number of Equal Monthly Installments	Single Premium Rate per $100
6	1.28
12	1.71
24	2.05
36	2.26
48	2.49
60	2.66
72	2.80
84	2.95
96	3.11
108	3.24
120	3.35

14-Days Non-Retroactive—Col. I

Number of Equal Monthly Installments	Single Premium Rate per $100
6	0.91
12	1.27
24	1.62
36	1.82
48	2.03
60	2.22
72	2.37
84	2.52
96	2.67
108	2.80
120	2.92

30-Days Retroactive—Col. I

Number of Equal Monthly Installments	Single Premium Rate per $100
6	0.90
12	1.28
24	1.63
36	1.84
48	2.07
60	2.29
72	2.42
84	2.59
96	2.75
108	2.90
120	3.04

30-Days Non-Retroactive—Col. I

Number of Equal Monthly Installments	Single Premium Rate per $100
6	0.52
12	0.85
24	1.18
36	1.42
48	1.62
60	1.81
72	1.95
84	2.12
96	2.27
108	2.42
120	2.57

7-Days Retroactive—Col. II

Number of Equal Monthly Installments	Single Premium Rate per $100
6	1.87
12	2.21
24	2.58
36	2.87
48	3.08
60	3.23
72	3.35
84	3.49
96	3.61
108	3.71
120	3.82

14-Days Retroactive—Col. II

Number of Equal Monthly Installments	Single Premium Rate per $100
6	1.43
12	1.90
24	2.28
36	2.52
48	2.76
60	2.95
72	3.12
84	3.29
96	3.45
108	3.60
120	3.72

14-Days Non-Retroactive—Col. II

Number of Equal Monthly Installments	Single Premium Rate per $100
6	1.02
12	1.42
24	1.80
36	2.03
48	2.26
60	2.47
72	2.63
84	2.79
96	2.96
108	3.12
120	3.24

30-Days Retroactive—Col. II

Number of Equal Monthly Installments	Single Premium Rate per $100
6	1.01
12	1.43
24	1.81
36	2.05
48	2.30
60	2.55
72	2.69
84	2.88
96	3.05
108	3.22
120	3.38

30-Days Non-Retroactive—Col. II

Number of Equal Monthly Installments	Single Premium Rate per $100
6	0.58
12	0.94
24	1.31
36	1.58
48	1.80
60	2.01
72	2.16
84	2.36
96	2.53
108	2.69
120	2.85

New Rule, R.1996 d.206, effective May 20, 1996.
See: 27 N.J.R. 3676(a), 28 N.J.R. 2621(a).

SUBCHAPTER 4. ELECTRONIC DATA PROCESSING EQUIPMENT

11:2–4.1 Cost of equipment as admitted asset

In determining the financial condition of a domestic or foreign insurance company or the United States branch of an alien insurance company, there shall be allowed as admitted assets the cost of electronic data processing equipment (hardware) purchased by the company, provided that such cost shall be amortized in full over a period not to exceed five calendar years, and provided further that where software is necessary to operate the system, such software shall be included as an asset.

Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).
Added provisions necessary in determining hardware and software as assets.

SUBCHAPTER 5. PROXIES, CONSENTS AND AUTHORIZATIONS

11:2–5.1 Applicability

(a) This Subchapter is applicable to all domestic stock insurers having 100 or more stockholders; provided, however, that this Subchapter shall not apply to any insurer if 95 per cent or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares are held by less than 500 stockholders.

(b) A domestic stock insurer which files with the Securities and Exchange Commission forms of proxies, consents and authorizations complying with the requirements of the Securities and Exchange Act of 1934 and the Securities and Exchange Acts Amendments of 1964 and Regulation X–14 of the Securities and Exchange Commission promulgated thereunder shall be exempt from the provisions of this Subchapter.

11:2–5.2 Solicitation; prohibition

No domestic stock insurer, or any director, officer or employee of such insurer subject to this subchapter, or any other person, shall solicit, or permit the use of his name to solicit, by mail or otherwise, any proxy, consent or authorization in respect to any stock of such insurer in contravention of this subchapter, and N.J.A.C. 11:2–6 and 11:2–7.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2–5.3 Disclosure of equivalent information

Unless proxies, consents or authorizations in respect of a stock of a domestic insurer subject to this subchapter are solicited by or on behalf of the management of such insurer from the holders of records of stock of such insurer in accordance with this subchapter and N.J.A.C. 11:2–6 and 11:2–7 prior to any annual or other meeting, such insurer shall, in accordance with this subchapter, and for such further regulations as the Commissioner may adopt, file with the Commissioner and transmit to all stockholders of record information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2–5.4 Definitions

(a) The definitions and instructions set out in Schedule SIS, as promulgated by the National Association of Insurance Commissioners, shall be applicable for purpose of this Subchapter.

(b) The terms "solicit" and "solicitation" for purposes of this Subchapter include:

1. Any request for a proxy, whether or not accompanied by or included in a form of proxy;

2. Any request to execute or not to execute, or to revoke, a proxy; or

3. The furnishing of a proxy or other communication to stockholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

(c) The terms "solicit" and "solicitation" shall not include:

1. Any solicitation by a person in respect of stock of which he is the beneficial owner;

2. Action by a broker or other person in respect to stock carried in his name or in the name of his nominee in forwarding to the beneficial owner of such stock soliciting material received from the company; or impartially instructing such beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy; or impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain date; or

3. The furnishing of a form of proxy to a stockholder upon the unsolicited request of such stockholder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

11:2–5.5 Information to be furnished to stockholders

(a) No solicitation subject to this subchapter shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in this subchapter.

(b) If the solicitation is made on behalf of the management of the insurer and relates to an annual meeting of stockholders at which directors are to be elected, each proxy statement furnished pursuant to (a) above shall be accomplished or preceded by an annual report, in preliminary or final form, to such stockholders containing such financial statements for the last fiscal year as are referred to in Schedule SIS under the heading "Financial Reporting to Stockholders." Subject to the requirements of this subsection with respect to financial statements, the annual report to stockholders may be in any form deemed suitable by the management.

(k) If the transaction was with the issuer of the securities, so state. If it involved the purchase of securities through the exercise of options, so state and give the exercise price per share. If any other purchase or sale was effected otherwise than in the open market, that fact shall be indicated. If the transaction was not a purchase or sale, indicate its character; for example, gift, five per cent stock dividend, and so forth, as the case may be. The foregoing information may be appropriately set forth in the table or under "Remarks" at the end of the table.

(*l*) A statement may include any additional information or explanation deemed relevant by the person filing the statement.

(m) If the statement is filed for a corporation, partnership, trust, and so forth, the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the statement is filed for an individual, it shall be signed by him or specifically on his behalf by a person authorized to sign for him.

Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).
Corrected address at (c).
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2–9.26 Form B

For copies of Form B, write to the Department of Banking and Insurance, PO Box 325, Trenton, New Jersey 08625–0325.

Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).
Corrected address.
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER 11. RULES GOVERNING ADVERTISEMENT OF HEALTH INSURANCE

11:2–11.1 Purpose, general provisions and definitions

(a) The purpose of this subchapter is to formalize standards to be followed in order to avoid misleading and deceptive advertising in the health insurance business.

(b) The proper promotion, sale and expansion of health insurance are in the public interest, and these rules shall be construed in such a manner as not to unduly restrict, inhibit or retard such promotion, sale and expansion.

(c) The Department, in interpreting the meaning of the rules when applied to a specific advertisement, shall take into consideration the detail, character, purpose, use and entire content of the advertisement. In all instances the basic test will be a rule of reason as to whether the advertisement has the capacity and tendency to mislead and deceive.

(d) Specific interpretations of the rules will be issued from time to time as circumstances warrant.

(e) An advertisement for the purpose of these rules shall include:

1. Printed and published material and descriptive literature of an insurer used in newspapers, magazines, radio, and TV (including CATV), billboards and similar displays;

2. Descriptive literature and sales aids of all kinds issued by an insurer for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustration, and form letters; and

3. Prepared sales talks, presentations and material for use by agents, brokers, and solicitors and representations made by agents, brokers, and solicitors in accordance therewith.

(f) Policy for the purpose of these rules shall include any policy of health insurance as defined in N.J.S.A. 17B:17–4, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides accident or sickness benefits, or medical, surgical or hospital expense benefits, whether on a cash indemnity, reimbursement, or service basis, except when issued in connection with another kind of insurance other than life, and except disability and double indemnity benefits included in life insurance and annuity contracts.

(g) Insurer for the purpose of these rules shall include any individual corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds, fraternal benefit society, and any other legal entity engaged in the advertisement of a policy as herein defined.

(h) "Endorsement" means any appraisal, analysis, testimonial or other public statement describing or expressing approval of any insurance product or of the terms, benefits or any other aspect of any insurance product.

(i) "Person" means any individual, insurer, company, association, organization, society, partnership, syndicate, trust, business trust, corporation and every legal entity.

(j) These rules shall also apply to agents and brokers to the extent that they are responsible for the advertisements of any policy.

Amended by R.1989 d.391, effective July 17, 1989.
See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).

New (d) and (e) added definitions of "endorsement" and "person"; old (d) recodified to (f).
Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2–11.2 Advertisements in general

Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases the meaning of which is clear only by implication or by familiarity with insurance terminology shall not be used.

11:2–11.3 Advertisements of benefits payable, losses covered or premiums payable

(a) Words, phrases or illustrations shall not be used in a manner which misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered or premium payable.

(b) An advertisement relating to any policy benefit payable, loss covered or premium payable shall be sufficiently complete and clear as to avoid deception or the capacity and tendency to deceive.

(c) When an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or specific policy benefit or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

11:2–11.4 Necessity for disclosing policy provisions relating to renewability, cancellability and termination

An advertisement which refers to renewability, cancellability or termination of a policy, or which refers to a policy benefit, or which shows or illustrates time or age in connection with eligibility of applicants or continuation of the policy, shall disclose the provisions relating to renewability, cancellability and termination and any modification of benefits, losses covered or premiums because of age or for other reasons, in a manner which shall not minimize or render obscure the qualifying conditions.

11:2–11.5 Method of disclosure of required information

All information required to be disclosed by these rules shall be set out conspicuously and in close conjunction with the statements in which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisements so as to be confusing or misleading.

11:2–11.6 Endorsements by third parties

(a) Endorsements used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using an endorsement, adopts as its own all of the statements contained therein, and the advertisement, including such statements, shall be subject to all of the provisions of this subchapter.

(b) A person shall be a "spokesperson" if either his or her image, voice or words are used in making an endorsement and if the person:

1. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise;

2. Is an entity formed by the insurer, or is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer;

3. Is in a policymaking position and is affiliated with the insurer in any of the capacities in (b)1 or 2 above; or

4. Is in any way directly or indirectly compensated for making the endorsement.

(c) Any person acting as a spokesperson as defined in (b) above, who transacts the business of or holds himself or herself out to the public as being an insurance producer as defined at N.J.S.A. 17:22A–2, and who is required to have a license pursuant to N.J.S.A. 17:22A–3, shall be considered to be an insurance producer and shall be required to be licensed pursuant to and shall submit to the requirements of N.J.S.A. 17:22A–1 et seq. and any implementing rules.

(d) Where, pursuant to (c) above, a spokesperson required to be licensed as an insurance producer is not licensed as an insurance producer, the advertisement shall include, in the manner prescribed by (e) below, the following statement: "This offer is not available in New Jersey." The requirements of this subsection shall apply to cases where the advertisement originates in or emanates from another state but is received or appears in New Jersey, and to advertisements which originate in or emanate from New Jersey.

(e) The fact of a financial interest, or the proprietary or representative capacity of a spokesperson, shall be disclosed in an advertisement. In both television and radio advertising the disclosure shall be spoken by the spokesperson and, in the case of television, visually presented consistent with the requirements for print advertising in this subsection. In print advertising, the disclosure shall be presented in a type style and size that is at least equal to the largest type otherwise used in the advertisement. The disclosure required by this subsection shall be accomplished in the introductory portion of the endorsement and shall be given prominence.

(f) If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning, in the manner provided by (e) above. The requirements of this subsection do not apply where the spokesperson is a company officer, a company director or an employee who is paid generally, but not specifically, for making the advertisement.

(g) The disclosure requirements in (e) and (f) above shall not apply where the sole financial interest or compensation of a spokesperson, for all endorsements made on behalf of the insurer, consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for television or radio performances.

(h) An advertisement shall not state or imply that an insurer, a policy or contract, or any type or line of insurance has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between such individual(s) or entity and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other entity has been secured. Prior written approval shall not be required in cases where the endorsing individual is a company officer, company director or an employee.

(i) If the person making the endorsement in (h) above has been formed by the insurer or is owned or controlled by the insurer, or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policymaking position in the association, that fact shall also be disclosed.

(j) When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection until the completion by the Department of Banking and Insurance of the next market conduct examination of the insurer.

(k) Endorsements which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefits being advertised shall not be used.

(*l*) Endorsements concerning Medicare supplement insurance shall be filed with the Office of Life and Health of the Department of Banking and Insurance at least 30 days prior to their first use. Radio and television endorsements shall be filed in transcribed form.

(m) An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency unless such is the fact and without prior written approval.

Repealed and replaced by R.1989 d.391, effective July 17, 1989.
See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).
Section formerly entitled "testimonials"; new rule greatly expanded the regulation of third party endorsements.
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
In (j) and (*l*), added "Banking and" to the Department name; and in (*l*) substituted "Office" for 'Division".

11:2–11.7 Use of statistics

(a) An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not be used unless it accurately reflects all of the relevant facts.

(b) Such an advertisement shall not imply that such statistics are derived from the policy advertised unless such is the fact.

11:2–11.8 Inspection of policy

An offer in an advertisement of free inspection of policy or offer of a premium refund is not a cure for misleading or deceptive statements contained in such advertisement.

11:2–11.9 Identification of plan or number of policies

(a) When a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits.

(b) When an advertisement refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

11:2–11.10 Disparaging comparisons and statements

An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely disparage competitors, their policies, services or business methods.

11:2–11.11 Jurisdictional licensing

(a) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.

(b) Such advertisements by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of some language such as "This Company is licensed only in State A" or "This Company is not licensed in State B".

11:2–11.12 Identity of insurer

(a) The identity of the insurer shall be made clear in all of its advertisements.

(b) An advertisement shall not use a trade name, service mark, slogan, symbol or other device which has the capacity and tendency to mislead or deceive as to the true identity of the insurer.

11:2–11.13 Group or quasi-group implications

An advertisement of a particular policy shall not state or imply that prospective policyholders become group or quasi-group members and as such enjoy special rates or underwriting privileges, unless such is the fact.

11:2–11.14 Introductory, initial or special offers

An advertisement shall not state or imply that a particular policy or combination of policies is an introductory, initial or special offer and that the applicant will receive advantages by accepting the offer, unless such is the fact.

11:2–11.15 (Reserved)

11:2–11.16 Service facilities

An advertisement shall not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy.

11:2–11.17 Statements about an insurer

An advertisement shall not contain statements which are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age or relative position in the insurance business.

11:2–11.18 Insurers' responsibility and control; advertising file; certificate of compliance

(a) All advertisements, regardless of by whom written, created or designed, shall be the responsibility of the insurer sponsoring the same.

(b) Every insurer shall at all times maintain complete control over the content, form and method of dissemination of all advertisements of its contracts.

(c) Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of individual policies and typical printed, published or prepared advertisements of blanket, franchise and group policies hereafter disseminated in this or any other state whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised.

(d) Such file shall be subject to regular and periodical inspection by this department.

(e) All such advertisements shall be maintained in said file for a period of five years from their last use.

(f) Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of this regulation must file with this department together with its annual statement, a certificate executed by an authorized officer of the insurer where it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws of this State as implemented and interpreted by this regulation.

Amended by R.1989 d.391, effective July 17, 1989.
See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).
At (e) deleted requirement to retain file for at least a four year period.

11:2–11.19 Penalties

Failure to comply with the provisions of this regulation shall constitute a violation of the Insurance Laws of this State and shall subject any individual or company so failing to comply to all the penalties provided by law.

11:2–11.20 Prior regulation superseded

This regulation supersedes in its entirety the Regulation which was previously issued by the Insurance Department on February 1, 1956.

11:2–11.21 Effective date

This regulation shall become effective upon the date of publication of its adoption in the New Jersey Register.

11:2–11.22 Severability

If any provision of clause of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

SUBCHAPTER 12. MASS MARKETING OF PROPERTY AND LIABILITY INSURANCE

11:2–12.1 Introduction

The purpose of this regulation is to prescribe rules to prevent abuses in connection with the sale of personal property-liability insurance in this State pursuant to mass marketing plans, while preserving for consumers the potential benefits of this form of marketing.

11:2–12.2 Definitions

The following words and terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Mass marketing plan" means a method of selling personal property-liability insurance wherein:

1. Such insurance is offered to employees of particular employers or to members of particular associations or organizations;

2. The employer, association or organization, if any, has agreed to or otherwise affiliated itself with the sale of such insurance to its employees or members;

3. Some rate, coverage, underwriting or substantial service advantage is provided which is not available from the same insurer on a nonplan basis.

"Personal property-liability insurance" shall mean all forms of personal lines, fire, allied lines, casualty, marine and inland marine insurance and insurance to which Sections 17:17–1 et seq. and 39:6A et seq. of the insurance law applies.

11:2–12.3 Applicability

This regulation shall be applicable only to insurance policies issued or renewed in this State and is in addition to, and not in substitution for, other applicable requirements of the insurance law and Department regulations. The requirements of this regulation are not applicable to methods of marketing other than mass marketing plans.

Case Notes

Mass marketing of property and liability insurance rules discussed in holding that plaintiff failed to present sufficient evidence to infer that defendants conspired to give defendant medical malpractice insurer a monopoly in the New Jersey medical malpractice field, that defendants engaged in an unlawful boycott or that defendants conspired to drive plaintiff out of business. Owens v. Aetna Life & Casualty Co., 654 F.2d 218 (3rd Cir.1981), certiorari denied 102 S.Ct. 657, 454 U.S. 1092, 70 L.Ed.2d 631 (1981).

11:2–12.4 Fictitious arrangement prohibited

No insurer shall sell insurance pursuant to a mass marketing plan to members of any association or organization formed principally for the purpose of obtaining such insurance.

11:2–12.5 Premiums and policy forms

(a) Premiums under a mass market plan shall comply with the filing requirements and with the standards in the insurance law, including the standards that rates not be excessive, inadequate, or unfairly discriminatory. Rates shall not be deemed to be unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expenses factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy.

(b) Prior to the sale or use of any mass marketing plan in New Jersey, the individual or master policy forms and certificates of insurance of such plan shall first be filed with and approved by the Commissioner.

11:2–12.6 Statistics

An insurer selling insurance pursuant to mass marketing plans shall maintain separate statistics as to loss and expense experience pertinent to each individual plan only if such individual plan provides some rate or coverage advantage not available from the same insurer on a nonplan basis.

11:2–12.7 Producers

No person shall act as an insurance agent or an insurance broker in connection with a mass marketing plan for any kind of insurance unless such person is duly licensed, under N.J.S.A. 17:22A–1 et seq. as an insurance agent or broker for such kind of insurance in such insurance plan.

Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).
Editorial changes only.

11:2–12.8 Compulsory participation prohibited

No insurer shall sell insurance pursuant to a mass marketing plan if it is a condition of employment or of membership in an association, organization or other group that any employee or member purchase insurance pursuant to such plan, or if any employee or member shall be subject to any penalty by reason of his nonparticipation. The fact that a nonparticipant does not voluntarily enjoy the benefits of any employer contribution shall not be deemed a penalty.

11:2–12.9 Tie–in sales prohibited

(a) No insurer shall sell insurance pursuant to a mass marketing plan if:

1. The purchase of insurance available under such plan is contingent upon the purchase of any other insurance, product or service; or

2. The purchase or price of any other insurance, product, or service is contingent upon the purchase of insurance available under such plan.

(b) This provision shall not be deemed to prohibit the reasonable requirement of safety devices, such as, heat detectors, lightning rods, theft prevention equipment and the like or other kinds of insurance prescribed by law.

11:2–12.10 Disclosure required

Every insurer, agent or broker selling insurance pursuant to a mass marketing plan shall, prior to sale, make full and fair disclosure to prospective employee and member insureds of all features of such plan, whether favorable or unfavorable, including, but not limited to, premium rates, contributions, benefits, exclusions, duration of coverage, policyholder services, conversion privileges available, and the financial interests in the plan, if any, of the sponsoring employer, association, organization or the group. Said disclosure shall be provided in writing and a copy filed with the Department.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2–12.11 Underwriting standards

(a) No insurer shall use underwriting standards for individual risk selection in a mass marketing plan which are, on the whole, either less restrictive, unless written with an appropriate charge as contemplated by the insurer's filed

rates, or more restrictive than the standards used by such insurer for individual risk selection in the sale of the same kind of insurance in this State other than pursuant to mass marketing plans.

(b) Underwriting standards used for any mass marketing plan shall be filed with the Commissioner together with individual or master policy forms and certificates used in conjunction with such plan.

11:2–12.12 Cancellation and nonrenewal

(a) The failure of an employer, association, organization or other group to remit premiums when due for any reason (including but not limited to interruption or termination of employment or membership) shall not be regarded as "non-payment of premium" by any employee or member insured under any such plan providing for remittance of premium by such employer, association, organization or other group, unless such insured shall have been given written notice of such failure to remit and shall not himself have paid such premium by the later of ten days after such notice or the due date of such premium remittance under the mass marketing plan.

(b) Any insurer which delivers in this State to any employer, association or organization a contract of insurance pursuant to the application or request of such employer, association or organization, acting for an insured other than itself, shall be deemed to have authorized such employer, association or organization to receive on its behalf payment of any premium which is due on such contract at the time of its issuance or delivery. Moneys collected for premiums for a mass marketing plan shall be kept in a separate account for the benefit of insured employees or members.

(c) Unless otherwise covered by statute, regulation or policy, all mass marketing plans shall provide those insured under such plan with an opportunity to purchase individual equivalent coverage in the same insurer upon termination of employment or membership or upon the discontinuance of the mass marketing plan. The insured employee or member may maintain his policy in force upon payment of the premium applicable to the class of risk to which he belongs on an individual basis. The option to maintain the insurance in force shall be exercised within 30 days following the date of termination.

(d) Any notice of cancellation or nonrenewal of any policy of an employee or member insured under a mass marketing plan shall be accompanied by a notice to the employee or member that, at his request, the insurer will afford the employee or member, and the employer, association, organization or other group a reasonable opportunity to consult with the insurer and to present facts in opposition to cancellation or nonrenewal.

11:2–12.13 Compulsory facilities

An insurer, agent or broker selling insurance pursuant to a mass marketing plan shall, with respect to any employees or members who apply for but are denied insurance under such plan and are not otherwise insured, assist such persons in their efforts to obtain insurance through any other appropriate voluntary or mandatory insurance plan, such as, the New Jersey Automobile Insurance Plan or the plans of the New Jersey Insurance Underwriting Association.

11:2–12.14 Eligibility

(a) Any employer, association, or organization domiciled or principally located in New Jersey may be eligible for a mass marketed insurance plan if 25 or more employees or members are enrolled to participate upon inception of the plan.

(b) Size of group and number of participant requirements are not applicable where the employer, association or organization having some employees or members in New Jersey is domiciled or principally located outside of New Jersey, provided such employer, association or organization has its mass marketing plan approved by such other state.

11:2–12.15 Severability

If any provision of this regulation or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this regulation, and to this end each Section of this regulation is declared to be severable.

SUBCHAPTER 13. GROUP COVERAGE DISCONTINUANCE AND REPLACEMENT

11:2–13.1 Purpose and scope

(a) The purpose of this subchapter is to set forth requirements regarding the discontinuance and replacement of all group life, accident and health insurance policies and contracts, group dental plan organization contracts, group dental service corporation contracts and group health maintenance organization contracts.

(b) This subchapter shall apply to all life and all accident and health (including credit) insurance policies, subscriber contracts, dental plan organization contracts (DPO contracts), dental service corporation contracts (DSC contracts) and health maintenance organization contracts (HMO contracts) issued, amended or provided by a carrier on a group or group type basis. This subchapter shall not apply to contracts issued in connection with temporary disability benefits or workers' compensation laws.

As amended, R.1975 d.129, eff. April 24, 1975.
See: 7 N.J.R. 114(b), 7 N.J.R. 276(c).

13. Where the insurer specifies the use of after market parts, the insurer shall disclose to the claimant, in writing, either on the estimate or on a separate document attached to the estimate, the following information, which shall appear in print no smaller than 10 point type:

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN LIKE KIND AND QUALITY IN TERMS OF FIT, QUALITY AND PERFORMANCE TO REPLACEMENT PARTS AVAILABLE FROM THE ORIGINAL MANUFACTURER.

The insurer shall clearly identify on the estimate of such repair all after market parts installed on the vehicle.

14. If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, it shall have 10 working days following receipt of notification of claim to inspect the claimant's damaged property at a place and time reasonably convenient to the claimant, provided that the claimant has not refused to make the property available for inspection. For third-party property damage claims, this paragraph shall apply once the insured's liability is reasonably clear. This paragraph does not apply to losses caused by a catastrophe.

15. If any loss other than a motor vehicle loss subject to N.J.A.C. 11:3–10 is to be settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply to the claimant before beginning negotiations a copy of the estimate upon which the settlement is to be based.

i. Such estimate prepared by or for the insurer shall be reasonable, and of an amount which will allow for repairs to be made in accordance with generally accepted standards for safe and proper repairs, subject to policy conditions, such as limits, deductible, depreciation, and prior damage.

ii. If the claimant subsequently claims, based upon a written estimate which he/she obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the company shall review the written estimate and respond to the claimant within 10 working days, and may provide or, if requested, must provide the claimant with the name of the repair shop or contractor that will make the repairs in accordance with generally accepted standards for safe and proper repairs.

Amended by R.1988 d.480, effective October 17, 1988.
See: 20 N.J.R. 1159(a), 20 N.J.R. 2578(a).
Added new 10–13; renumbered old 10–11 as 14–15.
Administrative Correction to (a)13.
See: 21 N.J.R. 3666(a).
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
Rewrote (a)8.

11:2–17.11 Written notice by insurers of payment of claims

(a) Upon payment of $5,000 or more in settlement of any third-party liability claim, where the claimant is a natural person, the insurer or its representative (including the insurer's attorney) shall mail to the third-party claimant written notice of payment at the same time payment is made to the third-party claimant's attorney or other representative.

(b) Upon payment of $5,000 or more in settlement of any first-party property claim, the insurer or its representative (including the insurer's attorney) shall mail to the first-party claimant written notice of payment at the same time payment is made to the first-party claimant's public adjuster or other representative.

(c) The written notice referred to in (a) or (b) above shall be mailed to the claimant by regular mail at the claimant's last known address, and shall include at least the following information:

1. The amount of the payment;

2. The party or parties to whom the check is made payable;

3. The party to whom the check was mailed; and

4. The address of the party to whom the check was mailed.

(d) Nothing in (a) or (b) above shall create, or be construed to create, a cause of action for any person or entity, other than the Department, against the insurer or its representative based upon a failure to serve such notice, or the defective service of such notice. Nothing in (a) or (b) above shall establish, or be construed to establish, a defense for any party to any cause of action based upon a failure by the insurer or its representative to serve such notice, or the defective service of such notice.

New Rule, R.1993 d.681, effective December 20, 1993.
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
Added a new (b); and recodified a former (b) and (c) as (c) and (d).

Case Notes

Lawyer concentrating in debt collections may, at request of institutional client-creditor, use power of attorney in endorsing client-creditor's name to drafts from debtors without violating ethical rule that lawyer property separate until there is accounting and severance of interests. Matter of Advisory Committee on Professional Ethics Docket No. 22–95, 144 N.J. 590, 677 A.2d 1100 (1996).

11:2–17.12 Examinations

(a) Each insurer's claim files are subject to examination and inspection by the Commissioner or by his duly appoint-

ed designees pursuant to N.J.S.A. 17:23–4, 17:29B–5, 17B:21–3 and 17B:30–16.

(b) Detailed documentation and/or evidence shall be contained in each claim file in order to permit the Commissioner or his designated examiners or investigators to reconstruct the company's activities relative to the claims settlement. Such documentation shall include but is not necessarily limited to all investigative reports, payment vouchers, transactions, notices, memoranda and work papers. With respect to automobile damage claims, file documentation also shall include the name, address, telephone number and license number of any auto body repair facility that has been utilized by the insurer in the adjustment of the loss or repair of the automobile. All such documentation shall be properly dated and, for investigative reports, notes, memoranda and work papers, the parties preparing such documents shall be identified.

(c) Every insurer shall maintain records of all pertinent communications relating to a claim. The records must identify the date of the communication and the parties, and describe the substance of the communication.

Amended by R.1987 d.249, effective June 15, 1987.
See: 18 N.J.R. 2415(a), 19 N.J.R. 1096(a).
Inserted new text in (b) "With respect to ... of the automobile."
Recodified from 11:2–17.11 by R.1993 d.681, effective December 20, 1993.
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

11:2–17.13 Special claims reports

(a) If the Department observes that an insurer's claims settlement practices are not meeting the standards established by statute or by this subchapter, the Department may require such insurer to file periodic reports. Depending on the nature and extent of an insurer's deviations from such standards and with due consideration of the insurer's data capabilities, the Commissioner in his discretion may require the report to include some or all of the statistics listed below:

1. The total number of claims submitted;
2. The original amount claimed;
3. The classification by line or insurance of each individual claim;
4. The total number of claims denied;
5. The total number of claims paid;
6. The total number of claims compromised;
7. The amount of each settlement;
8. The total number of claims for which lawsuits are instituted against the insurer, the reason for the lawsuit, and the amount of the final adjudication; and
9. An individual listing showing the disposition and other information for each claim.

Recodified from 11:2–17.12 by R.1993 d.681, effective December 20, 1993.
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
In (a), deleted "of Insurance" in reference to the Department.

11:2–17.14 Separability

If any provision of this subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Recodified from 11:2–17.13 by R.1993 d.681, effective December 20, 1993.
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

11:2–17.15 Penalties

(a) If, after notice and hearing, the Commissioner finds that a person has violated this subchapter, he shall make his findings in writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such violation. The Commissioner may order payment of a penalty not to exceed $1,000 for each and every violation unless the person knew or reasonably should have known he was in violation of this subchapter, in which case the penalty shall not be more than $5,000 for every violation. The Commissioner shall collect the penalty in the name of the State in a summary proceeding in accordance with "the penalty enforcement law" (N.J.S.A. 2A:58–1 et seq.).

(b) Any person who violates a cease and desist order of the Commissioner under (a) above, after it has become final, and while such order is in effect, shall be liable to a penalty not exceeding $5,000 for each violation, which may be recovered in a civil action. In determining the amount of the penalty the question of whether the violation was willful shall be taken into consideration.

(c) The penalties provided herein shall be in addition to any other penalties authorized by law.

Repeal and New Rule, R.1987 d.249, effective June 15, 1987.
See: 18 N.J.R. 2415(a), 19 N.J.R. 1096(a).
Petition for Rulemaking.
See: 25 N.J.R. 6065(a).
Recodified from 11:2–17.14 by R.1993 d.681, effective December 20, 1993.
See: 25 N.J.R. 3921(a), 25 N.J.R. 5929(b).

SUBCHAPTER 18. READABLE POLICIES

11:2–18.1 Purpose

The Plain Language Law (N.J.S.A. 56:12–1 et seq., as amended) requires certain insurance policies to be written in a "simple, clear, understandable and easily readable way." N.J.S.A. 39:6A–23 requires that each buyer's guide and coverage selection form required by that section to be issued to insureds and prospective insureds for automobile insurance be written in plain language. This subchapter provides rules for the implementation of these provisions.

Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).
Added statutory cite and requirements for buyer's guide and coverage selection form.

11:2–18.2 Scope

(a) This subchapter applies to all insurance policies which are issued to individuals to provide coverage for personal, family, or household purposes except life, health and annuity policies defined in N.J.S.A. 17B:17–19a, the "Life and Health Policy Language Simplification Act." Examples of coverage for personal, family or household purposes are:

1. Policies used solely to provide homeowners insurance, dwelling fire insurance on one to four family units, or individual fire insurance on dwelling contents;

2. Policies principally used to provide primary insurance on private passenger automobiles which are individually owned and used for personal or family needs; and

3. Policies of personal inland marine, personal theft, residence glass, and personal liability insurance.

(b) Coverage for personal, family or household purposes does not include policies or contracts of commercial lines insurance subject to N.J.S.A. 17:29AA–1 et seq. and N.J.A.C. 11:13.

(c) This subchapter does not supersede any other law, regulation or filing procedure.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Substantially amended (b).

11:2–18.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Buyer's Guide" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A–23, which provides a brief description of all available policy coverages and benefit limits, identifies which coverages are optional and mandatory, and identifies all options offered by the insurer.

"Commissioner" means the Commissioner of Banking and Insurance.

"Coverage Selection Form" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A–23, which provides information required by the Commissioner pursuant to N.J.A.C. 11:3–15.7.

"Insurer" means any person, corporation, company, association, partnership, title insurance company, eligible authorized surplus lines insurer, or any other legal entity issuing a contract of insurance subject to this subchapter. In this subchapter, "insurer" also includes rating organizations.

"Policy" means any contract of insurance subject to this subchapter and includes, but is not limited to, all policies, contracts, certificates, riders and endorsements that provide insurance coverage to individuals. "Policy" also includes applications to be signed by the applicant and all other writings required to complete the insurance transaction.

"Text" means all printed matter in a policy, except the name and address of the insurer; the name, number and title of the policy; the table of contents or index, captions or subcaptions; applications; specification or declarations pages; and schedules or tables. "Text" does not include the Coverage Selection Form or specific language required, permitted or approved by a law, regulation, rule or published interpretation of a State or Federal agency.

Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).
Added definitions for "Buyer's Guide" and "coverage selection form"; modified "text".
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
Amended "Commissioner".

11:2–18.4 Minimum readability standards

(a) The Plain Language Law provides, at N.J.S.A. 56:12–10, certain "examples of guidelines" that the Commissioner may consider in determining whether a contract complies with the Act. The readability standards in this section are in addition to the standards enumerated in the Act.

(b) A policy, Buyer's Guide and Coverage Selection Form shall be printed in legible type style with adequate contract between paper and ink. Captions, headings and spacing shall be used to increase overall readability.

(c) A policy and Buyer's Guide shall be printed in not less than 10 point type, one point leading. This rule shall not apply to schedules and tables; specification or declaration pages; or applications.

(d) Applications to be signed by the applicant shall be printed in not less than 8 point type, one point leading. Provided, however, that conditions or exceptions to the main promise of the agreement contained in an application shall be printed in at least 10 point type. (See N.J.S.A. 56:12b.(1).)

1. The 8 point type, one point leading standard set forth in (d) above shall become operative on July 1, 1983.

(e) Policies and Buyer's Guides with 3,000 or more words, or with four or more pages, shall contain a table of contents or alphabetical index.

(f) The style, arrangement and overall appearance of the policy shall give no undue prominence to any portion of the text or to any endorsements or riders.

(g) Each section of a policy, Buyer's Guide and Coverage Selection Form shall be self-contained and independent. However, general provisions applicable to more than one section may be included in a common section.

(h) Policies shall contain only essential provisions.

(i) Policies, the Buyer's Guide and the Coverage Selection Form shall be written in everyday, conversational language with a personal style, and technical terms or words with a special meaning shall be avoided wherever possible.

(j) The text of a policy and Buyer's Guide shall achieve a score of at least 40 on the Flesch reading ease test or an equivalent score on a comparable test authorized for use by the Commissioner.

1. For the purpose of this subsection, a Flesch reading ease test score shall be measured by the following method:

i. For policy forms and Buyer's Guides containing 10,000 words or less of text, the entire form shall be analyzed. For policy forms and Buyer's Guides containing more than 10,000 words, the readability of two 200 word samples per page may be analyzed instead of the entire form. The samples shall be separated by at least 20 printed lines.

ii. The number of words and sentences in the text or sample shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of 1.015.

iii. The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of 84.6.

iv. The sum of the figures computed under ii and iii above subtracted from 206.835 equals the Flesch reading ease score for the policy form or Buyer's Guide.

v. In measuring the Flesch test score, the following special rules shall be observed when counting syllables, words and sentences:

(1) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables shall be used;

(2) A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be counted as one word; and

(3) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence.

2. At the option of the insurer, riders, endorsements, and other forms made a part of the policy may be scored as separate forms or as part of the policy.

3. A score lower than 40 on a Flesch reading ease test may be permitted whenever the Commissioner finds a lower score is warranted by the nature of a particular policy form or type or class of policy forms.

As amended, R.1982 d.410, effective November 15, 1982.
See: 14 N.J.R. 967(a), 14 N.J.R. 1307(c), 14 N.J.R. 1398(b).
(c) deleted "not required . . . the applicant."
(d) added. Old (d) through (i) changed to (e) through (j).
Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).
Added references throughout to Buyer's Guide and Coverage Selection Form.

11:2–18.5 Procedures for requesting an opinion of compliance with the Plain Language Law

(a) An insurer may request an opinion from the Commissioner as to whether an insurance policy and related "writings required to complete the consumer transaction", a Buyer's Guide and a Coverage Selection Form are in compliance with the Plain Language Law. The Commissioner shall consider the Law's provisions and the implementing provisions of this subchapter in responding to such requests.

(b) For each policy form and related writings, Buyer's Guide and Coverage Selection Form for which an opinion is desired, an insurer shall prepare the Request for Opinion shown in Exhibit A of the Appendix to this subchapter. For related writings (including riders and endorsements) submitted separately from a basic contract to which they will apply, one Request for Opinion Form shall be prepared for each writing or group of writings applicable to one policy form. The insurer shall also provide two copies (where possible, "specimen" or "proof" copies) of the policy and related writings, Buyer's Guide and Coverage Selection Form to be reviewed.

(c) An officer of the insurer shall complete and submit the Affidavit of Compliance shown in Exhibit B of the Appendix to this subchapter for each policy and related writings, or for each separately submitted writing or group of writings applicable to one policy form. An officer of a rating organization which requests an opinion as to compliance may complete and sign the affidavit on behalf of the member companies of the rating organizations.

(d) An opinion as to compliance should not be requested for a policy form to be issued on a nationwide basis unless the policy form will be issued in New Jersey.

(e) Pursuant to N.J.S.A. 56:12–5, an insurer need not request an opinion as to compliance with the Plain Language Law for policy forms identical to those which have already been certified for some other insurer or rating organization.

(f) Any insurance policy, Buyer's Guide and Coverage Selection Form whose language is revised for any reason, including compliance with the Plain Language Law, must be approved by the Commissioner pursuant to insurance laws and regulations before it can be issued:

1. The Commissioner's opinion as to compliance with the Plain Language Law is distinct from his or her approval of a policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations.

2. Filings for review and approval of policies, Buyer's Guides and Coverage Selection Forms pursuant to insurance laws and regulations should be prepared in accordance with existing filing procedures.

3. Ordinarily, a request for an opinion as to a policy's, Buyer's Guide's or Coverage Selection Form's compliance with the Plain Language Law and a filing for approval pursuant to insurance laws and regulations should be submitted to the Commissioner at the same time and in the same package.

4. If an insurer has already received approval of a policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations, and believes that the policy, Buyer's Guide and Coverage Selection Form complies with the Plain Language Law without further revision, it may resubmit it for the sole purpose of requesting an opinion as to compliance with the Plain Language Law. In completing the Request for Opinion Form (Exhibit A), an insurer should provide information necessary to confirm the previous approval of the policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations.

Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).
Added references to Buyer's Guide and Coverage Selection Form.

Case Notes

Homeowners' policy did not have to be submitted to commissioner for approval; insurer used approved policy form that had received plain language certification. Bromfeld v. Harleysville Ins. Companies, 298 N.J.Super. 62, 688 A.2d 1114 (A.D.1997).

11:2–18.6 Enforcement

The Commissioner may seek injunctive relief to enforce this subchapter. The court may authorize reasonable attorney's fees and costs in such a proceeding.

11:2–18.7 Separability

If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall be affected.

APPENDIX

EXHIBIT A

REQUEST FOR OPINION AS TO COMPLIANCE WITH PLAIN LANGUAGE LAW

(N.J.S.A. 56:12–1 et seq., as amended)

NAME OF INSURER: _____ FORM NUMBER: _____
ADDRESS: _____ DATE OF SUBMITTAL: _____
TELEPHONE: _____

I. PURPOSE OF SUBMISSION

1. Is an opinion as to whether the form, Buyer's Guide or Coverage Selection Form complies with the Plain Language Law being requested pursuant to N.J.S.A. 56:12–8?

YES NO

2. Is filing and approval pursuant to insurance laws and regulations by the Department of Banking and Insurance also being requested?

YES NO

Note: Filings for approval of policies pursuant to insurance laws and regulations should be prepared in accordance with the Department's existing procedures. Requests for readability certification should include Exhibits A and B; two copies of the policy (including related writings), Buyer's Guide or Coverage Selection Form to be reviewed; and any appropriate attachments.

3. If the form, Buyer's Guide or Coverage Selection Form you are submitting has already been approved by the Department of Banking and Insurance pursuant to insurance laws and regulations, please indicate the following information:

DEPARTMENT FILE NUMBER:

DATE OF DEPARTMENT OF BANKING AND INSURANCE APPROVAL: _____

II. REFERENCE TO OTHER FORMS

Pursuant to N.J.S.A. 56:12–5, an insurer need not request an opinion as to compliance with the Plain Language Law for policy forms identical to those which have already been certified for some other insurers or rating organization or if, in the case of a Buyer's Guide and Coverage Selection Form, the language does not differ from N.J.A.C. 11:3–15.6 or N.J.A.C. 11:3–15.7.

1. If a policy, Buyer's Guide or Coverage Selection Form, is similar but not identical to a previously certified policy, Buyer's Guide or Coverage Selection Form, please

identify the previously certified policy, Buyer's Guide or Coverage Selection Form, as specifically as possible. Include the following information if available.

FILER:_____

FORM NUMBER:_____

DEPARTMENT FILING NUMBER:_____

DATE OF CERTIFICATION:_____

2. Indicate how the material now submitted for review differs from the previously certified materials by the use of brackets for deleted material and underlining for new material.

III. FLESCH READING EASE TEST

1. Identify any language not considered "text" as defined in N.J.A.C. 11:2–18.3 of the regulation on policy readability. This language may be identified by reference to the policy section numbers.

2. If any of the language identified in item 1 is required, permitted or approved by a law, regulation, rule or published interpretation of a State or Federal agency, identifying both the language and the law, rule or interpretation.

3. If the text of the policy or Buyer's Guide does not score at least 40 on the Flesch reading ease test, provide an explanation to enable the Commissioner to determine whether the lower score is warranted by the nature of the policy form (N.J.A.C. 11:2–18.4(i)3 of the regulation). A lower score will be accepted only in exceptional circumstances.

_____
Name and Title of Person Completing Form

_____
Signature

EXHIBIT B

AFFIDAVIT OF COMPLIANCE

NAME OF INSURER: _____ FORM NUMBER: _____

I certify that this contract and related writings comply with the Plain Language Law (N.J.S.A. 56:12–1 et seq.) and with N.J.A.C. 11:2–18.

I certify that the score of the text of the form on the Flesch reading ease test is _____ and that the test score has been accurately calculated as required by N.J.A.C. 11:2–18.

I also certify that the form(s) or Buyer's Guide is printed in not less than 10 point type, one point leading and/or the application is not less than 8 point type, one point leading as required by N.J.A.C. 11:2–18.4 and N.J.A.C. 11:3–15.6.

I also certify that any Coverage Selection Form submitted is not less than 12 point type, as required by N.J.A.C. 11:3–15.7.

Date: _____ _____
Name and Title of Insurer's Officer

_____
Signature

Amended by R.1984 d.514, effective November 5, 1984.
See: 16 N.J.R. 1945(a), 16 N.J.R. 3037(a).
Added "I also certify . . . N.J.A.C. 11:2–18.4."
Amended by R.1991 d.4, effective January 7, 1991.
See: 22 N.J.R. 1673(a), 23 N.J.R. 103(a).
Recodified as an appendix to Subchapter 18.
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
In Exhibit A, added a reference to Banking throughout.

SUBCHAPTER 19. DESIGNATION OF THIRD PARTY FOR CERTAIN NOTIFICATIONS BY SENIOR CITIZEN INSUREDS

Authority

N.J.S.A. 17:1–8.1, 17:1–15e and 17:29C–1.1 and 1.2.

Source and Effective Date

R.2002 d.210, effective July 1, 2002.
See: 34 N.J.R. 366(a), 34 N.J.R. 2315(a).

11:2–19.1 Purpose and scope

(a) N.J.S.A. 17:29C–1.1 and 1.2 allow senior citizen insureds of policies of personal lines insurance to designate a third party to whom the insurer must transmit a copy of important notices affecting insurance coverage. This subchapter provides rules for the implementation of those provisions.

(b) This subchapter applies to all insurance policies or contracts of insurance that are issued or issued for delivery in this State for personal, family or household purposes, as determined by the Commissioner, by an insurer on a risk located or resident in this State for which the premiums are paid directly to the insurer by the senior citizen insured.

11:2–19.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Advertisement" means material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate or retain a policy, and for the purpose of this subchapter, includes:

1. Printed and published material, including material disseminated through electronic means (including, but not limited to, the internet, fax machines, and other similar devices), audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;

2. Descriptive literature and sales aids of all kinds issued by an insurer or agent, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. Material used for the recruitment, training and education of an insurer's sales personnel, agents, solicitors, and brokers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, or retain a policy; or

4. Prepared sales talks, presentations, and material for use by sales personnel, agents, solicitors, and brokers.

"Advertisement" for the purpose of this subchapter shall not mean:

1. Communications or materials used within an insurer's own organization and not intended for dissemination to the public;

2. Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, or retain a policy;

3. A general announcement from a group or blanket policyholder to eligible individuals who are currently employees or members of the group that a policy or program has been written or arranged; provided that the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage; or

4. Any disclosure required under any rules currently in force or subsequently adopted in New Jersey governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules dealing with life insurance cost comparison indices, deceptive practices in the sale of life insurance, replacement of life insurance policies, and rules concerning annuities and deposit funds.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Endorsement" means any appraisal, analysis, testimonial or other public statement describing or expressing approval of any insurance product or the terms, benefits or any other aspect of any insurance product.

"Insurer" shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's, fraternal benefit society, and any other legal entity which is defined as an "Insurer" in the insurance laws of this State or which issues life insurance or annuities in this State and is engaged in the advertisement of a policy.

"Person" means any individual, insurer, company, association, organization, society, partnership, syndicate, trust, corporation and every legal entity.

"Policy" shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.

Amended by R.1989 d.391, effective July 17, 1989.
See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).
Definitions of "endorsement" and "person" added.
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
In "Advertisement", rewrote 1; and added definitions for "Commissioner" and "Department".

11:2–23.4 Form and content of advertisements in general

(a) Advertisements shall be truthful and not misleading in fact or by implication. Words or phrases the meaning of which is clear only by implication or by familiarity with insurance terminology shall not be used. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. The advertisement shall not have the capacity or tendency to mislead or deceive.

(b) Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(c) No advertisement shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "savings," "savings plan," or other similar terms in connection with a policy when they have the tendency to mislead a purchaser or prospective purchaser into believing that he will receive something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

(d) The fact that the policy offered is made available to a prospective insured prior to consummation of the sale or that an offer is made to refund the premium if the purchaser is not satisfied does not remedy misleading statements.

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2–23.5 Disclosure requirements

(a) All information required to be disclosed by this subchapter shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisements so as to be confusing or misleading.

(b) No advertisement shall omit material information or use words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or State or Federal tax consequences.

(c) An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently disclosed.

(d) An advertisement for a policy with non-level premiums shall prominently describe the premium changes.

(e) Advertisements referring to dividends must comply with the following requirements:

1. An advertisement shall not utilize or describe dividends in a manner which is misleading or has the capacity or tendency to mislead;

2. An advertisement shall not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future; and

3. An advertisement shall not state or imply that illustrated dividends under a participating policy and/or pure endowments will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains:

i. What benefits or coverage would be provided at such time; and

ii. Under what conditions this would occur.

(f) An advertisement shall not state a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general assets of the company.

(g) In the event an advertisement uses "Non–Medical," "No–Medical Examination Required," or similar terms where issuance of a policy is not guaranteed, such terms shall be accompanied by further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.

(h) An advertisement shall not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating that it is life insurance.

(i) An advertisement shall prominently describe the type of policy advertised, such as group, term, whole life, etc.

(j) An advertisement of an insurance policy marketed by direct response techniques, such as direct mail or toll-free telephone, shall not state or imply that because there is no agent or commission involved there will be a cost saving to prospective purchasers unless such is the fact. No such cost savings may be stated or implied without justification satisfactory to the Commissioner. Such justification must be available to the Commissioner upon request.

(k) Endorsements by third parties must comply with the following requirements:

1. Endorsements used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using an endorsement, adopts as its own all of the statements contained therein, and the advertisement, including such statements, shall be subject to all of the provisions of this subchapter.

2. A person shall be a "spokesperson" if either his or her image, voice or words are used in making an endorsement and if the person:

i. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise;

ii. Is an entity formed by the insurer, or is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer;

iii. Is in a policymaking position and is affiliated with the insurer in any of the capacities in (k)2i and ii above; or

iv. Is in any way directly or indirectly compensated for making the endorsement.

3. Any person acting as a spokesperson as defined in (k)2 above, who acts as or holds himself or herself out to be an insurance producer as defined at N.J.S.A. 17:22A, and who is required to have a license pursuant to N.J.S.A. 17:22A–3, shall be considered to be an insurance producer and shall be required to be licensed pursuant to and shall submit to the requirements of N.J.S.A. 17:22A–1 et seq. and any implementing rules.

4. Where, pursuant to (k)3 above, a spokesperson required to be licensed as an insurance producer is not licensed as an insurance producer, the advertisement shall include, in the manner prescribed by (k)5 below, the following statement: "This offer is not available in New Jersey." The requirements of this paragraph shall apply to cases where the advertisement originates in or emanates from another state but is received or appears in New Jersey and to advertisements which originate in or emanate from New Jersey.

5. The fact of a financial interest, or the proprietary or representative capacity of a spokesperson, shall be disclosed in an advertisement. In both television and radio advertising, the disclosure shall be spoken by the spokesperson and, in the case of television, visually presented consistent with the requirements for print advertising in this subsection. In print advertising, the disclosure shall be presented in a type style and size that is at least equal to the largest type otherwise used in the advertisement. The disclosure required by this paragraph shall be accomplished in the introductory portion of the endorsement and shall be given prominence.

6. If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning in the manner provided by (k)5 above. The requirements of this paragraph do not apply where the spokesperson is a company officer, a company director or an employee who is paid generally, but not specifically, for making the advertisement.

7. The disclosure requirements of this subchapter shall not apply where the sole financial interest or compensation of a spokesperson, for all endorsements made on behalf of the insurer, consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for television or radio performances.

8. An advertisement shall not state or imply that an insurer, policy or contract, or any type or line of insurance has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between such individual(s) or entity and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other person has been secured. Prior written approval shall not be required in cases where the endorsing individual is a company officer, company director or employee.

9. If the person making the endorsement in (k)8 above has been formed by the insurer or is owned, or controlled by the insurer, or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policymaking position in the association, that fact shall also be disclosed.

10. When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection until the completion by the Department of the next market conduct examination of the insurer.

11. Endorsements which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefits being advertised shall not be used.

12. An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency unless such is the fact and without prior written approval.

(*l*) An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified therein.

(m) Advertisements referring to introductory, initial, or special offers and enrollment periods must comply with the following requirements:

1. An advertisement of an individual policy or combination of such policies shall not state or imply that such policy or combination of such policies is an introductory, initial, or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies;

2. An advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy;

3. An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised; and

4. An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered in New Jersey unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period. The advertisement shall specify the date by which the applicant must mail the application, which shall be not less than 10 days and not more than 40 days from the date on which such enrollment period is advertised for the first time.

i. Paragraph (m)4 above applies to all advertising media, that is, mail, newspapers, radio, television, magazines, and periodicals, by any one insurer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control.

ii. Paragraph (m)4 above does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to his or her request.

iii. Paragraph (m)4 above is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the New Jersey insurance laws for group or blanket insurance.

iv. In cases where an insurance product is marketed on a direct basis to prospective insureds by reason of some common relationship with a sponsoring organization, this rule shall be applied separately to each sponsoring organization.

(n) An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends, or underwriting privileges, unless such is the fact.

(*o*) An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends, or rates of other insurers. An advertisement shall not falsely or unfairly describe other insurers, their policies, services, or methods of marketing.

Amended by R.1989 d.391, effective July 17, 1989.
See: 21 N.J.R. 970(a), 21 N.J.R. 2039(a), 21 N.J.R. 2289(c).
At (k), requirements regarding third party endorsements greatly expanded.
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2–23.6 Identification of insurer, plan and number of policies

(a) The name of the insurer shall be clearly identified, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. An advertisement shall not use a trade name, an insurance group designation, name of a parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

(b) No advertisement shall use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols, or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency.

(c) When a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits.

(d) When an advertisement refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

Case Notes

Fine was appropriate penalty for insurance broker's misleading advertisement. Karpinski v. Automated Insurance Concepts Agency, Inc., 96 N.J.A.R.2d (INS) 13.

11:2–23.7 Jurisdictional licensing and status of insurer; statements about the insurer

(a) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond such limits.

(b) An advertisement may state that an insurer is licensed in the state where the advertisement appears, provided that it does not exaggerate such fact or suggest or imply that competing insurers may not be so licensed.

(c) Such advertisements by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of some language such as "This Company is licensed only in State A" or "This Company is not licensed in State B."

(d) An advertisement shall not create the impression that the insurer, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. If a governmental entity has recommended or endorsed a policy form or plan, however, such fact may be stated if the entity authorized its recommendation or endorsement to be used in an advertisement and if the advertisement clearly defines the scope and extent of the recommendation.

SUBCHAPTER 30. (RESERVED)

SUBCHAPTER 31. MANNER OF DETERMINING PREMIUM FOR PERPETUAL HOMEOWNERS INSURANCE

11:2–31.1 Purpose

This subchapter sets forth the manner of determining premium for perpetual homeowners insurance for any applicable statutory fee, surcharge, tax or assessment.

11:2–31.2 Scope

The provisions of this subchapter apply to all insurers transacting the business of perpetual homeowners insurance in this State, including all perils insured thereunder.

11:2–31.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Annual adjustments" means any adjustments in the perpetual deposit account during the calendar year, exclusive of dividends. Increases include any additions to the account, such as policy fees and premium assessments. Decreases include the return of perpetual deposits, in whole or in part, due to the termination of policies and any other decreases, exclusive of dividends.

"Commissioner" means Commissioner of the New Jersey Department of Banking and Insurance.

"Insurer" means an insurance company licensed to transact the business of perpetual homeowners insurance in this State.

"Net perpetual deposits" means the total perpetual deposits received by an insurer for perpetual homeowners insurance increased or decreased by annual adjustments.

"Perpetual deposit" means a payment by a policyholder for perpetual homeowners insurance.

"Perpetual homeowners insurance" means a homeowners policy and related endorsements, including all perils insured thereunder, which remains continuously in effect until cancelled, and is paid for with one lump sum deposit with no additional payment required, notwithstanding any subsequent fees or assessments.

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2–31.4 Determination of premium

(a) For the purposes of any statutory fee, surcharge, tax or assessment based on premium and applicable to perpetual homeowners insurance, premium is:

1. The sum of the net perpetual deposits received for perpetual homeowners insurance from the inception of the policy through the calendar year immediately preceding the date that such applicable statutory fee, surcharge, tax or assessment is due, multiplied by:

2. The average annual interest rate on one-year U.S. Treasury bills for the calendar year in question.

(b) The premium base for any applicable statutory fee, surcharge, tax or assessment is calculated annually as set forth in (a) above less any so-called dividends returned or credited to policyholders during the calendar year in question.

11:2–31.5 Data filed; examination

(a) Each insurer shall include with the annual statement filed with the Commissioner, a list of the lines of business under which perpetual homeowners insurance is written, on form(s) prescribed by the Commissioner.

(b) All data submitted is examined by the Commissioner and he or she may make any further audit or investigation or reaudit as necessary. An insurer shall pay the reasonable expenses of any examination, pursuant to N.J.S.A. 17:23–4.

11:2–31.6 Penalties

Failure to comply with these provisions may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33–2.

SUBCHAPTER 32. CUSTODIAL DEPOSITS

11:2–32.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the procedures for the holding by the Commissioner of any required deposits and to establish the fees to be charged the depositor for the services of the custodian of such deposits pursuant to N.J.S.A. 17:20–1 et seq., 17:46B–1 et seq., 17:50–6, and 17B:18–37 et seq.

(b) This subchapter applies to all insurers required by the laws of this State to make a security deposit to be held for the benefit and security of all the policyholders of the company making such deposit. This subchapter also applies to any other entity required to make a deposit with the Commissioner in order to transact business in this State. This subchapter does not apply to any insurer under liquidation pursuant to N.J.S.A. 17:30C–1 et seq. or 17B:32–1 et seq., as applicable.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2–32.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Bank" means a State or Federally chartered bank, savings bank, or savings and loan association which has trust powers and which has its principal office in New Jersey.

(b) The insured or self-insured shall file a copy of the allocation form when it employs an alternative method of allocation to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22–6.64 and 6.65, and all renewals, until such time the alternative method is approved and filed.

11:2–34.5 Duty to keep records

(a) The surplus lines agent shall maintain records concerning the method used to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22–6.57 and 6.58, including those records as indicated in the allocation schedule, and all renewals, for a period not less than three years.

(b) The insured or self insured shall maintain records concerning the method used to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22–6.64 and 6.65, including those records as indicated in the allocation schedule, and all renewals, for a period not less than three years.

(c) These records shall be available for review by the Department at all times and copies shall be provided to the Surplus Lines Examining Office of the Department, upon request, at any time during the period of retention.

11:2–34.6 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law including, but not limited to, N.J.S.A. 17:22–6.61, 6.64 and 6.76.

APPENDIX

SURPLUS LINES PREMIUM TAX AND ALLOCATION SCHEDULE

Criteria for Tax Allocation of Multi–State Risks

Classification	Allocated to New Jersey by
PROPERTY INSURANCE	
Real Property (including buildings and other permanent additions)	Insured value of structures and other property in New Jersey
Personal Property (including inland marine)	Insured value of property permanently or principally situated in New Jersey
Business Interruption, Time Element or similar time valued coverages	Insured time valued elements in New Jersey
Farmowners, Homeowners and Businessowners (BOP)	Insured value of structures and other property in New Jersey
Aircraft	Insured value of aircraft principally hangared in New Jersey
Motor Vehicle	Insured value of motor vehicles principally garaged in New Jersey
Kidnap and Ransom	Number of insured employees principally employed in New Jersey
Ocean Marine	None to New Jersey
FIDELITY AND SURETY	
Fidelity, Forgery and other Indemnity Bonds	Number of insured employees in New Jersey
Bankers Blanket Bonds	Number of insured employees in New Jersey
Performance Bonds	Total bond value of contracts in New Jersey
Other Surety Bonds	Total bond value of contracts in New Jersey
CREDIT INSURANCE	
Credit Insurance	Value of insured debt in New Jersey
RESIDUAL VALUE INSURANCE	
Residual Value Insurance	Allocate to value of underlying property
LIABILITY INSURANCE	
Manufacturers and Contractors	Payroll in New Jersey
Premises Operations	Square footage of premises in New Jersey
Owners and Contractors Protective	Cost of contract in New Jersey
Products	Number of units manufactured in New Jersey
Completed Operations	Receipts in New Jersey
Child Care	Number of children in New Jersey
Contractual	If "stand alone" policy, value of sales in New Jersey
Recreational	Amount of gate receipts in New Jersey
Environmental Impairment	Number of units of exposure in New Jersey
Asbestos Abatement	Payroll in New Jersey
Employee/Member Benefit Program	Number of employees/members in New Jersey
Special Events	Number of events in New Jersey
Professional Liability	Number of named insureds in New Jersey
Errors and Omissions	Revenues generated in New Jersey
Directors and Officers: For-profit organization	Revenues generated in New Jersey
	Number of employees
Non-for-profit organization	Headquartered in New Jersey
Hospital, Nursing Home and Adult Home	Number of beds in New Jersey plus one additional bed for each 100 outpatient visits at locations in New Jersey
Liquor Liability	Receipts from sales of alcoholic beverages in New Jersey
Railroad Protective	Miles of track in New Jersey
Aircraft	Number of aircraft principally hangared in New Jersey
Motor Vehicle	Number of motor vehicles principally garaged in New Jersey
Umbrella	Classification of predominant coverage; except if underlying coverages are divisible, then use underlying classifications
Excess Liability	If directly over primary, use underlying classifications. If over umbrella, use method for "umbrella" coverage
Comprehensive General Liability	Composite Rated Exposure based allocated to New Jersey

---

SUBCHAPTER 35. RELIEF FROM INSURER OBLIGATIONS UNDER THE FAIR AUTOMOBILE INSURANCE REFORM ACT OF 1990

11:2–35.1 Purpose and scope

(a) The purpose of this subchapter is to establish the informational and procedural requirements for insurer re-

quests for exemption, abatement, deferral, suspension of or excuse from an insurer's obligation, as the case may be, under the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B–1 et seq.

(b) This subchapter applies to all insurers licensed to transact the business of property/casualty insurance in this State and all insurers licensed to transact and writing the business of private passenger automobile insurance in this State, as the case may be.

Amended by R.1993 d.24, effective January 4, 1993.
See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).
Provision for excuse from obligation added.

11:2–35.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Applicant" means the insurer seeking an exemption, abatement, deferral, suspension of or excuse from its obligations pursuant to the FAIR Act.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"FAIR Act" means the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B–1 et seq.

"Insurer" means any person, corporation, association, partnership, company or interinsurance exchange authorized or admitted by the laws of this State to transact the business of insurance in this State.

"Relief" means an exemption, abatement, deferral, suspension of or excuse from the obligations imposed pursuant to the FAIR Act.

"Unsafe or unsound financial condition" is as defined in N.J.S.A. 17:33B–19, 17:33B–20, 17:33B–23, 17:33B–24, 17:33B–27, 17:33B–28, 17:33B–52, 17:33B–53, 17:33B–55 and 17:33B–56, as applicable. For purposes of relief from obligations imposed pursuant to N.J.S.A. 17:30E–14g, 17:33B–9c, and 17:33B–11c(5), "unsafe or unsound financial condition" shall have the same meaning as in N.J.S.A. 17:33B–19 and 17:33B–20, and the same procedures therein shall be followed depending on whether the relief sought is immediate or discretionary.

Amended by R.1993 d.24, effective January 4, 1993.
See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).
"Excuse" added to "Applicant" and "Relief" definition; "unsafe or unsound" clarified further.
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
Added "Department"; in "FAIR Act", deleted Public Law reference.

11:2–35.3 Application procedures and filing format

(a) Any insurer seeking immediate relief from any FAIR Act obligation pursuant to N.J.S.A. 17:30E–14g, 17:33B–9c, 17:33B–11c(5), 17:33B–19, 17:33B–23, 17:33B–27, 17:33B–52 or 17:33B–55 shall submit a request for such relief no more than 45 days and not less than 15 days prior to the due date for payment or fulfillment of such obligation.

(b) Any insurer seeking discretionary relief from any FAIR Act obligation pursuant to N.J.S.A. 17:30E–14g, 17:33B–9c, 17:33B–11c(5), 17:33B–20, 17:33B–24, 17:33B–28, 17:33B–53 or 17:33B–56 shall submit a request for such relief no later than the due date of such obligation.

(c) All requests outlined in this subchapter shall be accompanied by a statement averring a need for immediate or discretionary relief from such obligation, as the case may be, including supporting documentation, as set forth in N.J.A.C. 11:2–35.4 and shall specify the statutory basis for such relief. A single filing may request relief from any number of FAIR Act obligations.

(d) Each request shall be in loose leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the exhibits set forth in N.J.A.C. 11:2–25.4. The loose leaf sheets used in the request shall be eight and one-half inches wide and 11 inches long and punched for two-ring or three-ring binders, as appropriate.

(e) All insurers requesting relief pursuant to this subchapter shall submit five copies of each request in the format set forth in (d) above.

(f) A request which is untimely, which is not submitted in the proper format, or which does not contain all of the information required by N.J.A.C. 11:2–35.4 or this section, may be rejected on such grounds by the Commissioner.

(g) If a request fails to contain all of the information required by N.J.A.C. 11:2–35.4 or this section, the Department shall notify the insurer that its request for relief is deficient and is denied for inadequate documentation. The notice shall also set forth the information required to cure the deficiency. The insurer shall submit the additional information within 30 days of receipt of the Department's notice of deficiency. Failure to submit within 30 days the information necessary to cure the deficiency may result in the insurer's request being rejected as untimely.

Amended by R.1993 d.24, effective January 4, 1993.
See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).
N.J.S.A. citations added, in reference to FAIR Act exemptions.

11:2–35.4 Informational filing requirements

(a) When requesting immediate or discretionary relief pursuant to the FAIR Act, an insurer shall provide with its request the following information in a clear, concise and complete manner.

1. A cover letter stating:

2. On or before June 1, a statement of opinion on loss or loss adjustment expense reserves made by a member of the American Academy of Actuaries, or a qualified loss reserve specialist;

3. By June 30, a report of financial condition, certified by an independent public accountant;

4. Within 30 days after filing in its state of domicile, a copy of each examination of the risk retention group as certified by the chartering state's commissioner or public official conducting the examination;

5. Upon request of the Commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group;

6. Such information as may be required to verify its continuing qualification as a risk retention group under N.J.A.C. 11:2–36.2, including, but not limited to, a certification of an officer that the group is composed of members whose business or activities are similar or related with respect to liability; and

7. Payment of the $100.00 Annual Statement filing fee in accordance with N.J.A.C. 11:1–32.

(e) Failure by any currently registered risk retention group either to file a statement of registration, to complete all information requested pursuant to this subchapter or to update changes in the statement of registration may result in suspension or forfeiture of the risk retention group's registration status with the Department.

(f) Any person wishing to establish a risk retention group chartered and licensed to write only liability insurance in this State shall, in addition to meeting the requirements pursuant to N.J.S.A. 17:17–1 et seq., submit to the Department a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within 10 days of any such change. The group shall not offer any additional kinds of liability insurance in this State, or in any other state, until a revision of such plan or study is approved by the Commissioner. Additionally, the risk retention group shall adhere to the requirements of N.J.S.A. 17:47A–1 et seq. and (b)1 through 5 above.

(g) Each risk retention group, its agents and representatives shall comply with the Unfair Claims Settlement Practices Act of this State, N.J.S.A. 17:29B–1 et seq., and any other State law regarding deceptive, false or fraudulent acts or practices.

(h) Each risk retention group must submit to an examination by the Commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the Commissioner of this State. The risk retention group shall pay the reasonable expenses of such an examination upon presentation by the Commissioner of a detailed account of the expenses.

(i) Each risk retention group shall comply with any lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the Commissioner if there has been a finding of financial impairment after an examination pursuant to this section.

(j) Each risk retention group shall comply with any injunction issued by a court of competent jurisdiction upon a petition by the Commissioner alleging that the group is in a hazardous financial condition or is financially impaired.

Amended by R.1993 d.558, effective November 15, 1993.
See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a).
Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
In (a)4, substituted "An Application for Registration" for "A statement of registration"; rewrote (c).

11:2–36.4 Additional risk retention groups requirements

(a) Any risk retention group which is registered in this State and chartered and licensed under the laws of any other state and which wishes to do business in this State, in addition to the requirements of N.J.A.C. 11:2–36.3, shall distribute its annual statement of operations to its members.

11:2–36.5 Notice and registration requirements of purchasing groups

(a) No purchasing group shall do business in this State as a purchasing group until it has complied with the requirements of this subchapter and received notification from the Department that it has been registered to do business in this State.

(b) Any group of persons with similar exposure to risk may form a purchasing group for the purpose of purchasing liability insurance.

1. Any purchasing group with members located in this State shall submit to the Department an Application for Registration (as set forth in Appendix C and incorporated herein by reference), a Notice of Appointment (as set forth in Appendix D and incorporated herein by reference) and a Policy Form Certification (as set forth in Appendix E and incorporated herein by reference) which shall be accompanied by a registration fee in accordance with N.J.A.C. 11:1–32.

2. Each purchasing group registered pursuant to this section shall submit to the Department from time to time, as it may require, reports relative to the group's operations.

3. Each purchasing group with members in this State registered pursuant to this subsection is subject to audits or examination as the Commissioner may deem necessary.

(c) Any purchasing group which was doing business in this State prior to August 16, 1993 shall submit to the Department a statement of registration (as set forth in Appendix C) and a Notice of Appointment (as set forth in Appendix D). The statement of registration must be filed no later than November 8, 1993. The purchasing group shall notify the Commissioner of any change in the information in the statement of registration within 30 days of any change.

(d) Failure of any currently registered purchasing group either to file a statement of registration, to complete all information requested pursuant to this subchapter or to update changes in the statement of registration, may result in suspension or forfeiture of the purchasing group's registration status with the Department.

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
In (b)1, deleted "and" prior to ", a Notice of Appointment", and inserted "and a Policy Form Certification (as set forth in Appendix E and incorporated herein by reference)" preceding "which shall be accompanied by a registration fee".

11:2–36.6 Surplus lines coverage

(a) Where a purchasing group obtains a group policy from an insurer that is eligible as a surplus lines insurer in this State pursuant to N.J.S.A. 17:22–6.40 et seq., and the policy covers members in this State, it shall be deemed that a diligent effort has been made to procure such coverage from among insurers authorized to transact business in this State, provided the producer obtains declination of such coverage based on the group policy issued to the purchasing group. Such declinations may be for the benefit of all members of the purchasing group located in this State that may become members of the purchasing group under the group policy.

(b) For purposes of determining whether coverage obtained by a purchasing group constitutes a "large risk" pursuant to N.J.A.C. 11:1–34.6(a)16, the amount of premium to be considered shall include premiums paid for the particular coverage for all members under the group policy, rather than the premium for coverage of any individual member of the purchasing group.

New Rule, R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
Former N.J.A.C. 11:2–36.6, Fines and penalties, recodified to N.J.A.C. 11:2–36.7.

11:2–36.7 Fines and penalties

(a) Each risk retention group, whether chartered in this State or otherwise, is subject to the same fines and penalties to which insurers licensed in this State are subject for any violation of this subchapter or any other applicable law.

(b) Failure of a risk retention group or purchasing group doing business in this State to comply with the provisions of this section may, after notice and a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, result in the revocation or suspension of its registration in this State.

Recodified from N.J.A.C. 11:2–36.6 by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

APPENDIX A

STATEMENT OF REGISTRATION
STATE OF NEW JERSEY
APPLICATION FOR REGISTRATION AS A RISK RETENTION GROUP

(All information should be typed)

1. List the corporate name of the Risk Retention Group.

   _____

   (Name *must* include the phrase "Risk Retention Group")
2. The Risk Retention Group is chartered and licensed as a liability insurance company under the laws of the State of _____, and is authorized to engage in the following lines of insurance under the laws of its chartering State:

   _____

   _____

   _____
3. Ownership of the Risk Retention Group consists of one of the following (check one):
   - ☐ the owners of the Group are the only persons who comprise the membership of the Group and who are provided insurance by the Group;
   - ☐ the sole owner of the Group is _____

     _____

     _____

     (Give name and address of organization)

     an organization whose members only comprise the membership of the Group, and whose owners are only persons who comprise the membership of the Group and who are provided insurance by the Group.
4. Give a general description of business or activities engaged in by Group members:

   _____

   _____

   _____
5. List the name, address, fax number and telephone number of each officer of the Risk Retention Group and the key officer or staff person (*Not* an employee of the group's management company) responsible for overseeing "hands on management" of the group. (Attach additional pages if necessary.)

   _____

   _____

   _____

   _____
6. A. List the home office address of the Risk Retention Group:

   _____

   _____

   _____

B. List the mailing address of the Risk Retention Group:

_____

_____

_____

7. List the name, address and telephone number of the company responsible for management of the insurance operations of this risk retention group. (If none, answer none.)

_____

_____

_____

_____

8. List the name, address and telephone number of the principal agent or broker responsible for marketing the group's insurance policies, pursuant to N.J.S.A. 17:22A–1 et seq.

Name:_____

Address:_____

Phone Number:_____

Producer ID Reference Number:_____

9. The items described below should be attached to the registration form:
   A. If not previously submitted, registration fee in the amount of $100.00 made payable to the "State of New Jersey General Treasury."
   B. Completed and signed Service of Process.
   C. A listing of the individual(s) who organized the group and the individuals who are providing administrative services or otherwise influence or control the activities of the group.

As President or Chief Executive Officer of the _____, I hereby certify that the information contained in this registration is true and correct and in conformance with 15 USC 3901 et seq., N.J.S.A. 17:___ and N.J.A.C. 11:___. Further, I certify that:

The Risk Retention Group is composed of members who are engaged in the following described business or activities, which are similar or related with respect to the liability to which such members are exposed by virtue of related, similar, or common business, trade, product, services, premises or operations.

The primary activity of this Risk Retention Group consists of assuming and spreading all, or any portion, of the liability exposure of its members.

The Risk Retention Group is organized for the primary purpose of conducting the activity described above.

The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.

The activities of the Risk Retention Group do not include the provision of insurance other than:

(a) Liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and

(b) Reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in business or activities which qualify such other Risk Retention Group (or member) under item (6) above for membership in this Group.

In addition all required documents as set forth in 15 USC 3901 et seq., N.J.S.A. 17:___ and N.J.A.C. 11:___ are being included in this filing.

_____

President or Chief Executive Officer

_____

Secretary

Sworn before me this _____ day of _____, 19____.

_____

Notary Public, State of:
My Commission Expires:

(Revised 7/93)

Amended by R.1993 d.558, effective November 15, 1993.
See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a).

APPENDIX B

NOTICE OF APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE

STATE OF _____

DEPARTMENT OF BANKING AND INSURANCE

The _____, a Risk Retention Group (called the Group) duly organized under the laws of the State of _____, appoints the Commissioner of Banking and Insurance of the State of New Jersey and his or her successors in office, to be its lawful attorney upon whom all legal process in any action or proceeding against it shall be served and further agrees that any lawful process against it which is served upon this attorney shall have the same legal validity as if served personally upon the Group.

The Group gives the Commissioner and his or her successors, full authority to do every act necessary to be done under this appointment as fully as the Group could do if personally present, and ratifies all that lawfully do under the power granted by this appointment. This authority may be withdrawn only upon a written notice of revocation and in any case shall continue in effect so long as any liability arising out of this appointment remains outstanding in the State. This constitutes full compliance with Section 2(a)(1)(D) of the Liability Risk Retention Act of 1986.

The Group designates [_____] whose address is [_____] as the person to whom process against the Group served upon the Commissioner shall be forwarded.

IN WITNESS OF THIS APPOINTMENT, said Group pursuant to a resolution duly adopted by its Board of Directors, has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be affixed at the City of _____, State of _____, this _____ day of _____, ____.

Attest:

Secretary

(Name of Risk Retention Group)
By

President

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

APPENDIX C

STATE OF NEW JERSEY
APPLICATION FOR REGISTRATION
AS A PURCHASING GROUP
(All information should be typed)

1. List the exact name of the Purchasing Group.

2. Indicate the form of organization or incorporation and date.

3. The Purchasing Group is domiciled in the State of:

4. List any other names under which the Purchasing Group is or may be doing business in this State or any other State if different from above.

5A. List the complete physical address of the Purchasing Group.

5B. List the mailing address of the Purchasing Group.

6A. List the name, title, address, fax number, and telephone number of the principal officer of the purchasing group who has knowledge of its insurance program, including membership criteria, coverages, and key personnel of the group's administrator and insurance carrier.

6B. List the name, title, address, fax number, and telephone number of the firm that acts as the administrator of the purchasing group and the name of the principal account executive responsible for the group's insurance program. (If none, answer none.)

7. List the names, addresses and occupation of the principal officers and directors of the Purchasing Group. Attach additional pages if necessary.

Principal Officers | Principal Directors

8. Give a general description of the business or activities engaged in by the purchasing group members:

9. List the lines and classification of liability insurance Purchasing Group will purchase:

10. What are the limits of liability including per occurrence, aggregate per participant and group aggregate.

11. Deductible and self-insurance retentions
(a) Which are the responsibility of the individual participant?

(b) Which are the responsibility of the purchasing group and how funded?

12. List the insurance carriers from whom the Purchasing Group will purchase liability insurance described in item (9) above. Give full name of company, state of domicile and NAIC#:

13. Purchasing Groups procuring insurance through companies licensed in New Jersey or registered Risk Retention Groups must use an insurance producer pursuant to N.J.S.A. 17:22A–1 et seq. Please identify the producer(s) representing the purchasing group:
Name
Address
Phone No.
Producer License Reference Number:

14. Purchasing groups procuring insurance from New Jersey eligible surplus lines companies must place it through a licensed New Jersey insurance producer with surplus lines authority pursuant to N.J.S.A. 17:22–6.40 et seq. and 17:22A–1 et seq. Please identify the producer(s) representing the purchasing group:
Name
Address
Phone No.
Producer License Reference Number:

15. List who will adjust the claims:
Name
Address
Phone No.
Producer License Reference Number:

16. Has any person transacting business on behalf of this Purchasing Group ever:
(A) been arrested, indicted and convicted of a felony or is a felony charge currently pending against any such person?
(B) had denied any application for a professional, vocational or business license?
(C) had suspended or revoked any such license?
(D) had withdrawn or surrendered any such application or license to avoid potential disciplinary action against licensee?

If the answer to any part of this question is yes, attach a supplementary statement explaining in full each such occurrence.

The items described below should be attached to the registration form:
(a) If not previously submitted, registration fee in the amount of $100.00 made payable to the "State of New Jersey—General Treasury.

(b) Completed and signed Service of Process.
(c) A listing of the individual(s) who organized the Purchasing Group and the individuals who are providing administrative services or otherwise influence or control the activities of the group.
(d) A listing of at least two current members or two potential members, or provide written evidence that the purchasing group is registered in its state of domicile.
- The Purchasing Group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations.
- The Purchasing Group purchases such liability insurance only for its members and only to cover their similar or related liability exposure, as described in item (8) above.
- The policy or policy form certification, as applicable, and promotional material the purchasing group will use has been forwarded along with the registration.

In addition, all required documents are set forth in 15 USC 3901 et seq., N.J.S.A. 17:47A–1 et seq. and N.J.A.C. 11:2–36 are being included in this filing.

_____
President or Chief Executive Officer

_____
Secretary

Sworn before me this _____ day of _____, _____.

_____
Notary Public, State of:
My Commission Expires:

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
In 16, revised references to N.J.S.A. and N.J.A.C.; rewrote 16(d).

APPENDIX D

NOTICE OF APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE STATE OF NEW JERSEY

The _____, a Purchasing Group (called the Group) duly organized under the laws of the State of _____, appoints the Commissioner of Banking and Insurance of the State of New Jersey, and his or her successors in office, to be its lawful attorney upon whom all legal process in any action or proceeding against it shall be served and further agrees that any lawful process against it which is served upon this attorney shall have the same legal validity as if served personally upon the Group.

The Group gives the Commissioner and his or her successors full authority to do every act necessary to be done under this appointment as fully as the Group could do if personally present, and ratifies all that lawfully do under the power granted by this appointment. This authority may be withdrawn only upon a written notice of revocation and in any case shall continue in effect so long as any liability arising out of this appointment remains outstanding in the State. This constitutes full compliance with Section 2(a)(1)(D) of the Liability Risk Retention Act of 1986.

The Group designates [_____] whose address is [_____] as the person to whom process against the Group served upon the Commissioner shall be forwarded.

IN WITNESS OF THIS APPOINTMENT, said Group pursuant to a resolution duly adopted by its Board of Directors, has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be affixed in the City of _____, State of _____, this _____ day of _____, _____.

Attest:

_____ _____
Secretary (Name of Risk Retention Group)
By

_____
President

Amended by R.1993 d.558, effective November 15, 1993.
See: 25 N.J.R. 4298(a), 25 N.J.R. 5197(a).
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

APPENDIX E

POLICY FORM CERTIFICATION

I _____, hereby certify that
(Name)
I am the _____, an officer
(Title)
of _____, and am authorized to
(Name of insurer)
execute this certified statement on behalf of the insurer.

I further certify that the policy form(s) and rating system issued to _____ has been filed with
(Purchasing Group)
the New Jersey Department of Banking and Insurance, if required by law, and are otherwise in compliance with N.J.S.A. 17:29AA–1 et seq., N.J.A.C. 11:13–1, and N.J.S.A. 17:22–6.43.

I further certify that I am aware that the New Jersey Department of Banking and Insurance will rely on this certification in connection with the registration of the above referenced Purchasing Group.

_____
(Signature)

_____
(Date)

New Rule, R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

SUBCHAPTER 37. PRODUCER–CONTROLLED INSURERS

11:2–37.1 Purpose

The purpose of this subchapter is to implement N.J.S.A. 17:22D–1 et seq. to enable the Department to regulate transactions involving insurers which are controlled by insurance producers.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2–37.2 Scope

This subchapter shall apply to all licensed property and casualty insurers domiciled in this State or domiciled in a state that is not an accredited state having in effect a law substantially similar to N.J.S.A. 17:22D–1 et seq. This subchapter shall not apply to captive insurers.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2–37.3 Definitions

(a) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Accredited state" means a state in which the insurance department or other regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the NAIC.

"Captive insurer" means an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Control" or "controlled" has the same meaning as defined at N.J.S.A. 17:27A–1c.

"Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

"Controlling producer" means a producer who, directly or indirectly, controls an insurer.

"Department" means the New Jersey Department of Banking and Insurance.

"Licensed insurer" or "insurer" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, or other person engaged in the business of insurance pursuant to N.J.S.A. 17:17–1.

"FNAIC" means National Association of Insurance Commissioners.

"Producer" means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined at N.J.S.A. 17:22A–2.

"Producer-controlled" means controlled, directly or indirectly, by a producer.

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2–37.4 Filing of Producer-Controlled Insurer Information Report

All licensed property and casualty insurers domiciled in this State or domiciled in another state that is not a NAIC accredited state having in effect a law substantially similar to N.J.S.A. 17:22D–1 et seq., shall file an annual Producer-Controlled Insurer Information Report on a form (incorporated herein by reference as Appendix A) approved by the Commissioner. The Report shall be completed and filed with the Commissioner on or before April 1 for the calendar year immediately preceding.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2–37.5 Contents of the Producer-Controlled Insurer Information Report

(a) A Producer-Controlled Insurer Information Report form (Appendix A) shall be completed annually by each licensed property and casualty insurer to whom this subchapter applies and shall include the following information:

1. The name and address of the reporting insurer and any controlling producer. (A separate form should be completed and filed for each controlling producer.);

2. A certification by insurers that are not producer-controlled that they are not issuing any property and casualty insurance coverages that are or may be reportable pursuant to the provisions of N.J.S.A. 17:22D–1 et seq. or this subchapter;

3. A certification by producer-controlled insurers containing the following information:

i. The amount of the insurer's admitted assets as of September 30 of the preceding calendar year, gross premiums written during the calendar year and the percentage that gross premiums written represent of admitted assets;

ii. The amount of net premiums written during the preceding calendar year, commissions paid to the controlling producer during the calendar year and the percentage that commissions paid to the controlling producer represent of the net premiums written;

iii. Comparable amounts and percentage paid to noncontrolling producers for placement of the same kinds of insurance;

iv. An opinion of an independent casualty actuary reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including losses incurred but not reported, on business placed by the controlling producer, which loss reserve opinion shall satisfy all requirements established by N.J.A.C. 11:1–21 for loss reserve opinions required to be submitted by licensed property and casualty insurers in this State; and

v. A statement indicating whether or not the insurer's controlling producer or producers have been notified of the requirements of N.J.S.A. 17:22D–1 et seq. and these rules.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2–37.6 Confidentiality of documents

All documents submitted to the Commissioner pursuant to this subchapter are confidential and not public documents as defined in the Public Records Act, N.J.S.A. 47:1A–1 et seq.

11:2–37.7 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

APPENDIX A

PRODUCER–CONTROLLED INSURER
INFORMATION REPORT FORM

Calendar Year Ending December 31, ___

Instructions: All licensed property and casualty insurers domiciled in New Jersey, or domiciled in another state that is not a NAIC "accredited state" having in effect a law substantially similar to N.J.S.A. 17:22D–1 et seq., are required to complete annually either Section I or Section II of this form. Section I certifies that the requirements of New Jersey law have been reviewed and there is no controlling producer information to be reported. Section II should be completed for each producer who "controls" a reporting insurer. Completed reporting forms are due annually, on or before April 1 of each year.

SECTION I
To be completed by Insurers that
are *not* Producer–Controlled

I certify that

_____
(Name of Insurer)

_____
(Address of Insurer)

is not issuing any property and casualty insurance coverages that are or may be reportable pursuant to the provisions of N.J.S.A. 17:22D–1 et seq. and N.J.A.C. 11:2–37.1 et seq.

_____ _____
Date Authorized signature

_____
Title

SECTION II
To be completed by Producer–Controlled Insurers
(A separate Report Form should be completed and filed for each controlling producer.)

Calendar Year Ending December 31, ___

Name of Reporting Insurer: _____

Address: _____

Name of Controlling Producer: _____

Address: _____

1. Insurer's admitted assets as of September 30 of calendar year pursuant to N.J.S.A. 17:22D-3a: $_____
2. Gross premiums written, calendar year: $_____
3. Percentage that gross premiums written represent of admitted assets: _____%
4. Net premiums written, calendar year: $_____
5. Amount of commissions paid to controlling producer, calendar year: $_____
6. Percentage that commissions paid represent of net premiums written: _____%
7. Comparable amounts and percentage paid to noncontrolling producers for placement of the same kinds of insurance:
   Net premiums written: $_____
   Commissions paid: $_____
   Percentage: _____%
8. Attach the information required by N.J.S.A. 17:22D-3e: An opinion of an independent casualty actuary reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including losses incurred but not reported, on business placed by the controlling producer.
9. We have notified our controlling producer(s) of the requirements of N.J.S.A. 17:22D-1 et seq. and N.J.A.C. 11:2-37.1 et seq.

I certify that the above information is accurate and complete.

_____ _____
Date Authorized signature

_____
Title

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

SUBCHAPTER 38. TEMPORARY WAIVER FROM INCREASE IN PROPERTY AND CASUALTY CAPITAL AND SURPLUS REQUIREMENTS

Subchapter Historical Note

The name of Subchapter 38, Increase in Property and Casualty Capital and Surplus Requirements, was changed to Temporary Waiver From Increase in Property and Casualty Capital and Surplus Requirements by R.1997 d.186, effective May 5, 1997. See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

11:2–38.1 Purpose and scope

(a) The purpose of this subchapter is to provide procedures whereby property and casualty insurers may request a temporary waiver from the minimum capital and surplus requirements set forth in N.J.S.A. 17:17–6 and 17:17–7.

(b) This subchapter shall apply to all insurers, including reciprocal insurance exchanges, authorized, admitted or eligible to transact the business of property and casualty insurance in this State.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).
In (a), deleted second sentence, stating that subchapter provides procedures to increase statutory minimum requirements.

11:2–38.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Capital" means par value per share multiplied by the number of issued shares, or in the case of no-par shares, the total stated value.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"Insurer" means any stock or mutual insurance corporation, including a reciprocal insurance exchange, authorized, admitted or eligible to transact the business of property and casualty insurance in this State pursuant to N.J.S.A. 17:17–1 et seq.

"Surplus" means the net worth of an insurer as reported in its annual statement. For a stock insurer, surplus means net worth less minimum capital. For a mutual insurer, surplus means its net worth.

Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).
Amended "Commissioner" and "Department".

11:2–38.3 Requests for temporary waiver of capital and surplus requirements

(a) An insurer transacting business in this State as of August 9, 1993 may request a two-year temporary waiver from the minimum capital and surplus requirements set forth at N.J.S.A. 17:17–6 and 17:17–7, by making application in writing to the Commissioner on or before October 8, 1993. The waiver request shall be forwarded to:

New Jersey Department of Banking and Insurance
Office of Financial Examinations, Capital and Surplus Waivers
20 West State Street
PO Box 325
Trenton, NJ 08625–0325

(b) The Commissioner shall approve a temporary waiver requested pursuant to (a) above provided the insurer complies with the requirements set forth in (c) through (f).

(c) With the exception of (c)7 and (i) below, within 120 days of making application to the Commissioner for a temporary waiver of the statutory minimum capital and surplus requirements, the insurer shall additionally submit to the Department at the same address as set forth in (a) above, a proposed financial plan, which shall include the following:

1. The insurer's current capital and/or surplus as reflected in the last filed quarterly statement;

2. The reason(s) for the insurer's inability to meet the minimum capital and/or surplus requirements set forth at N.J.S.A. 17:17–6 and 17:17–7;

3. The insurer's proposed method and time frame for meeting the statutory minimum capital and/or surplus requirements, including the source(s) and amount(s) of additional funding;

4. A five-year projection, beginning December 31 of the following year and for the subsequent four years, of the following certified by a qualified actuary and accompanied by a narrative explaining the sources of anticipated premium and all assumptions made in developing the entire projection:

i. Assets, liabilities and surplus and other funds in the format of the Assets page and the Liabilities and Surplus and Other Funds page in the Annual Statement representing the insurer's five successive year-ends;

ii. Underwriting and investment income in the format of the Underwriting and Investment Exhibit, Statement of Income in the Annual Statement for each of the five years;

iii. The following information by line of business for each of the five years (the line of business classifications shall be those set forth in the Underwriting and Investment Exhibit, Part Two in the Annual Statement):

(1) Premiums earned;

(2) Losses incurred;

(3) Loss expenses incurred; and

(4) Ratios of the sum of the losses and loss expenses to premium earned;

(5) Net premiums written; and

iv. The projected values required in the Underwriting and Investment Exhibit, Part Four—Expenses in the Annual Statement; and

5. Any other information requested by the Commissioner which is relevant to the evaluation of a specific temporary waiver request.

6. In the case of a request for an extension pursuant to (g) below of a two-year waiver granted under (b) above, the insurer's proposed financial plan shall additionally include a report of the insurer's progress in meeting the minimum capital and/or surplus requirements.

7. Certain insurers transacting business in this State as of August 9, 1993 may, instead of filing the financial plan pursuant to (c)1 through 6 above, file a limited financial plan with the Department as follows:

i. Insurers intending to meet the statutory minimum capital and surplus requirements by deleting unused lines of business from its certificate of authority shall file within 120 days of making application to the Commissioner for a temporary waiver of the requirements, a limited financial plan which shall include a concise, accurate description of the specific course of action the insurer will follow to comply with the statutory capital and surplus requirements. These insurers may request in writing from the Commissioner a waiver from filing an orderly plan of withdrawal pursuant to N.J.A.C. 11:2–29.

ii. Insurers intending to meet the statutory minimum capital and surplus requirements by completing certain corporate and/or accounting adjustments to either capital stock or surplus accounts, shall file within 120 days of making application to the Commissioner for a temporary waiver of the requirements, a limited financial plan which shall include a concise, accurate description of the specific course of action the insurer will follow to comply with the statutory capital and surplus requirements.

(d) Upon receipt of the insurer's financial plan in (c) above, the Department shall provide the insurer with written notice of its approval of, or of any deficiencies in, the financial plan's proposed method for meeting the minimum capital and/or surplus requirements.

(e) Within 60 days of receipt of the Department's notice in (d) above informing the insurer of the deficiencies in its proposed financial plan, the insurer shall resubmit a revised financial plan correcting all deficiencies to the Department at the address set forth in (a) above.

(f) All data or information contained in the plan under (c) above is confidential and will not be disclosed by the Department to any person other than its employees and representatives.

(g) An insurer may request an extension of a two-year waiver granted by the Commissioner under (b) above not to exceed the five-year statutory compliance period set forth in N.J.S.A. 17:17–6 and 17:17–7 by submitting to the Department at least 90 days prior to the expiration of the two-year waiver, the items set forth in (c) above. The Department shall evaluate the insurer's extension request by following the procedures set forth in (d) through (f) above.

(h) If an insurer fails to request a temporary waiver of the minimum capital and/or surplus requirements pursuant to the procedures set forth in this section, the Department shall conclude that the insurer has met the minimum capital and/or surplus requirements. If, in fact, the insurer is unable to meet the minimum statutory capital and/or surplus requirements, the insurer shall be subject to suspension or revocation of its authority to do business in this State pursuant to N.J.S.A. 17:17–19.

(i) An insurer filing for a temporary waiver of the statutory capital and surplus requirements pursuant to (a) through (f) above, but which meets the requirements prior to expiration of the 120–day period for filing a financial plan with the Department, shall not be required to file a financial plan with the Department pursuant to N.J.A.C. 11:2–38.3(c). The insurer shall be required to file with the Department, within 120 days of applying for a waiver, a certification signed by the insurer's Chief Executive Officer, stating that the insurer has met the statutory capital and surplus requirements. The Commissioner may request that the insurer submit additional documentation to support the certification, if necessary.

Amended by R.1993 d.560, effective November 15, 1993.
See: 25 N.J.R. 4306(a), 25 N.J.R. 5204(a).
Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

11:2–38.4 Fines and penalties

Failure to comply with this subchapter may result in an insurer's suspension or revocation of authority to do business in the State of New Jersey.

Recodified from 11:2–38.6 and amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).
Former section, "Procedures for increasing capital and surplus requirements", was repealed.

11:2–38.5 (Reserved)

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Repealed by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).
Section was "Hearing requirements and procedures".

11:2–38.6 (Reserved)

Recodified to 11:2–38.4 by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

SUBCHAPTER 39. INCREASE IN CAPITAL AND SURPLUS REQUIREMENTS FOR INSURERS

Subchapter Historical Note

The name of Subchapter 39, Increase in Capital and Surplus Requirements For Life and Health Insurers, was changed to Increase in Capital and Surplus Requirements for Insurers by R.1997 d.186, effective May 5, 1997. See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).

11:2–39.1 Purpose and scope

(a) The purpose of this subchapter is to provide a framework for the establishment of uniform risk-based capital and surplus requirements for all insurers authorized, admitted or eligible to transact business pursuant to Title 17 or Title 17B of the New Jersey Statutes, and to implement the provisions of N.J.S.A. 17:17–6 et seq., and 17B:18–67 et seq. (enacted August 9, 1993), which provide new minimum capital and surplus requirements and authorize the Commissioner to increase these requirements for individual insurers based upon the insurer's business risks.

(b) This subchapter shall apply to all insurers authorized, admitted or eligible to transact business pursuant to Title 17 or Title 17B of the New Jersey Statutes. This subchapter shall not apply to mortgage guaranty insurers, financial guaranty insurers, or title insurers.

(c) This subchapter also shall not apply to any domestic property/casualty insurer that writes direct business only in this State; writes direct annual premiums of not more than $2 million; and assumes no reinsurance in excess of five percent of direct premiums written.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).
In (a), inserted reference to admitted and eligible insurers, substituted reference to transacting business for reference to writing health, life, and annuity business, and amended N.J.S.A. references; and added (b) and (c).

11:2–39.2 Definitions

(a) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Adjusted RBC Report" means an RBC Report which has been adjusted by the Commissioner in accordance with N.J.A.C. 11:2–39.3(d).

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Corrective order" means an order issued by the Commissioner in accordance with N.J.A.C. 11:2–39.5(b).

"Department" means the Department of Banking and Insurance.

"Domestic insurer" means an insurer formed under the laws of this State.

"Foreign insurer" means an insurer formed under the laws of a jurisdiction of the United States other than this State.

"Life/health insurer" means an insurer authorized or admitted to transact life, health or annuities business pursuant to N.J.S.A. 17B:18–35 et seq., or 17B:23–1 et seq., as applicable, or an authorized or admitted property/casualty insurer writing only accident and health insurance.

"NAIC" means the National Association of Insurance Commissioners.

"NAIC RBC Instructions" means the form of the Life Risk-Based Capital Report and instructions for completing such form adopted by the NAIC, as such form and instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

"NAIC RBC Report" means the Risk-Based Capital Report prepared pursuant to the NAIC RBC Instructions as set forth in N.J.A.C. 11:2–29.3.

"Negative trend" means with respect to a life/health insurer a negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the NAIC RBC Instructions.

"Property/casualty insurer" means an insurer authorized, admitted or eligible to transact business pursuant to N.J.S.A. 17:17–1 et seq., 17:32–1 et seq., or 17:22–6.40 et seq., as applicable.

"RBC" means Risk-Based Capital.

"RBC Instructions" means the NAIC RBC Instructions as supplemented by the Commissioner.

"RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

1. "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;

2. "Regulatory Action Level RBC" means, with respect to any insurer, the product of 1.5 and its Authorized Control Level RBC;

3. "Authorized Control Level RBC" means, with respect to any insurer, the number determined under the risk-based capital formula in accordance with the RBC Instructions; and

4. "Mandatory Control Level RBC" means, with respect to any insurer, the product of .70 and its Authorized Control Level RBC.

"RBC Plan" means a comprehensive financial plan containing the elements specified at N.J.A.C. 11:2–39.4(b). If the Commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the "Revised RBC Plan."

"RBC Report" means the NAIC RBC Report as supplemented pursuant to the RBC Instructions.

"Total adjusted capital" means an insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed pursuant to N.J.S.A. 17:23–1 et seq., and 17B:21–1 et seq., increased or decreased by such other items, if any, as the RBC Instructions may provide.

Amended by R.1993 d.561, effective November 15, 1993.
See: 25 N.J.R. 4309(a), 25 N.J.R. 5208(a).
Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).
Added "Domestic insurer", "Foreign insurer", "Life/health insurer", and "Property/casualty insurer"; and amended "NAIC RBC Report", "Negative trend", and "Total adjusted capital".
Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
Added "Commissioner" and "Department".

11:2–39.3 RBC reports

(a) Every domestic insurer shall, on or before each March 1 (the "filing date"), prepare and submit to the Commissioner an RBC Report as of the preceding December 31. The RBC Report shall be sent or delivered to:

New Jersey Department of Banking and Insurance
Office of Financial Examinations, RBC Reports
20 West State Street
PO Box 325
Trenton, New Jersey 08625–0325

(b) If at any time the Commissioner believes that the financial condition of an insurer may have materially changed, the Commissioner may request in writing an updated RBC Report from the insurer. In such event, the insurer shall, on or before the 45th day following such request (the "filing date"), prepare and submit to the Commissioner at the address in (a) above an RBC Report as of the last day of the calendar month coincident with or last preceding the date of the request.

(c) Every domestic insurer shall also file its NAIC RBC Report with the NAIC in accordance with the NAIC RBC Instructions. In addition, if the insurer has been notified in writing by the insurance department of any state in which the insurer is authorized to do business, the insurer shall file its NAIC RBC Report with such state by the filing date or, if later, within 15 days from receipt of notice to file.

(d) If an insurer files an RBC Report which in the judgment of the Commissioner is inaccurate, then the Commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report so adjusted shall be referred to as an Adjusted RBC Report.

(e) The calculation of an insurer's Required Surplus as set forth in an RBC Report filed and accepted by the Commissioner pursuant to (a) or (b) above, or as adjusted by the Commissioner pursuant to (d) above, shall be deemed to be a redetermination of the insurer's minimum statutory capital and surplus requirement pursuant to N.J.S.A. 17:17–16 and 17B:18–70.

1. If an insurer disagrees with the minimum capital and surplus as determined above, it may request a hearing as provided at N.J.A.C. 11:2–39.9.

2. An insurer requesting a hearing shall do so upon filing an RBC Report, or within 20 days of receipt of notice from the Commissioner of an adjustment.

3. Failure to request a hearing shall be deemed to be a waiver of the right to a hearing on the redetermined minimum capital and surplus requirement for the insurer.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).
Amended by R.1997 d.186, effective May 5, 1997.
See: 29 N.J.R. 404(a), 29 N.J.R. 2175(b).
In (a) and (b), deleted reference to specified types of insurers; in (a), changed filing date from March 15 to March 1 and amended Department reference in delivery address; in (d), added last sentence; and in (e), inserted additional N.J.S.A. reference.

11:2–39.4 Company action level event

(a) "Company action level event" means any of the following events:

1. The filing of an RBC Report by an insurer which indicates that:

i. The insurer's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or

ii. If a life/health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend;

2. The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in (a)1i or ii above, provided the insurer does not challenge the Adjusted RBC Report under N.J.A.C. 11:2–39.9; or

3. If the insurer, under N.J.A.C. 11:2–39.9, challenges an Adjusted RBC Report that indicates the event in (a)1i or ii above, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a company action level event, a domestic insurer shall within 45 days prepare and submit to the Commissioner an RBC Plan which shall:

1. Identify the conditions which contribute to the company action level event;

1. The notice shall comply with the readability standards set forth in N.J.A.C. 11:2–18;

2. A notice shall accompany the issuance of each new policy to which a hurricane deductible applies and each subsequent renewal thereof;

3. Where the deductible that applied in the prior policy term is changed at renewal (for example, a new mandatory hurricane deductible program for the insurer has been approved by the Department during the prior policy term), the policyholder notice shall state that the terms of the policy have been changed. The insurer shall use boldface type or other means to draw the reader's attention to this statement. The policyholder notice shall explain the changes made to the policy;

4. The notice must be specific to the policy and identify whether the hurricane deductible applied to the policy is optional or mandatory. If the notice does not set forth the specific flat dollar or percentage deductible applied to the policy, it shall clearly state that this information can be found on the policy declarations page;

5. The notice shall identify the circumstances and conditions under which the hurricane deductible will apply to the policy as set forth in the policy or endorsement, and shall reference where the deductible provision may be found in the policy or endorsement;

6. The notice shall explain how application of the hurricane deductible will affect settlement of a claim, including the coverages to which the hurricane deductible will apply, and shall provide a specific example of such a claim settlement;

7. The notice shall explain the relationship between the hurricane deductible and any other deductible that may apply to the policy;

8. The notice shall reference the consumer information brochure required under N.J.S.A. 17:36–5.36 for more detailed information concerning the insurer's hurricane deductible programs; and

9. If applicable, the policyholder notice shall explain how the insured may qualify for a lower hurricane deductible or the elimination of the hurricane deductible. In this case the policyholder notice shall:

i. Identify the criteria that must be met in order to qualify for a lower deductible or elimination of the hurricane deductible (for example, through the payment of an additional premium and/or implementation of loss mitigation features);

ii. Where loss mitigation is a condition, provide a general description or summary of the types of loss mitigation measures included in the insurer's hurricane deductible program and any documentation requirements utilized by the insurer; and

iii. Instruct the insured as to the process that must be followed to pursue any change or elimination of a hurricane deductible for which the insured may qualify. The instructions shall prominently identify any time limitations that may apply to changing or eliminating the hurricane deductible.

APPENDIX

EXHIBIT A

Expedited Homeowners Filings

Company/Group: _____

Company File No.: _____

Section	Item	Page #
11:2–42.3	Filing Requirements	
(a)2	Filing Source Document MARS001 and accompanying certification	
(a)3	Information required on each page	Yes / No
(a)4	All data reported on direct basis exclusive of reinsurance	Yes / No
(a)5	All data from voluntary market only	Yes / No
(a)6	Most recent AY ends no more than 15 months prior to submission date	Yes / No
(a)7	Three copies of filing submitted	Yes / No
(b)1	• Cover letter notifying DOBI of intention to modify rates under expedited approval procedure • Exhibit C, Rate change information • Proposed effective date • Name/Telephone/Address of Company officer to whom inquiries about the filing may be directed	_____ _____ _____
(b)2	Exhibit A, this checklist	
(b)3	• Manual rating pages	_____

	• Explanatory memorandum	_____
	• Company File #	_____
	• New/Renewal Effective Dates	
(b)4	Rating Examples	
(b)5	Exhibit B, rate change distribution by interval	
(b)6	Maximum Increase/Decrease with profile	
(b)7	Territorial Definitions	
(b)8	Justification for Minimum Premium (if changing)	
(b)9	Effects of each change in detail	
(b)10	Seven year rate history	

11:2–42.4 Premium and Loss Data

All data must be on a direct basis, and must be consistent throughout the filing. All data is to be provided by form by accident year for each of the latest five years.

(b)	NJ Earned Exposures by form and accident year	
(c)1	Earned Premium by form and accident year	
(c)2	On–Level factors	
(c)3	Current Amount factors	
(c)4	Premium Trend factors	
(c)5	Premium Trend period	
(d)1	Incurred Loss and ALAE (separately or combined)	
(d)2	Loss Development Factors—Incurred Loss and ALAE (separately or combined)	
(d)3	Current Cost Factors	
(d)4	Loss Trend Factors	
(d)5	ULAE factor (based on latest three year avg. from IEE Part 3)	
(d)6	Wind & Water Losses (if excluded)	
(d)7	Catastrophe Losses (if excluded)	
(d)8	Hurricane Losses (if excluded)	
(d)9	Excess Losses (if excluded)	
(d)10	Total of (d)6 through 8 does not exceed 20 percent	Yes / No
(d)11	Losses excluded in (d)6 through 9 also excluded from LDFs	Yes / No
(e)	Ultimate Loss + LAE ratio weighted 10/15/20/25/30	

11:2–42.4 Expense Data

(f)1	Commission & Brokerage Expense based on latest three years of NJ Page 14	
(f)2	General & Other Acquisition Expense based on latest three years of IEE Part 3	
(f)3	Taxes, Licenses, and Fees based on latest three years of NJ Page 14	
(f)4	Profit & Contingency Provision (with explanation if > five percent)	
(f)5	Investment Income using Cash Flow or State X	
(f)6	Total Expenses are sum of (f)1 through 4 less (f)5	
(g)	Permissible Loss Ratio = 1 Total Expenses	

11:2–42.4 Indications

(h)	Credibility based on 240,000 exposures per form	
(i)	Complement of Credibility	
(j)	Indication by form and overall based on five accident years, separated by categories in 4(a).	
(k)	Territorial Indications (if non-uniform base rate changes proposed)	
(*l*)	Alternate Methodology (optional)	

11:2–42.5 Limitation on filer's rate request

	Requested increase overall and by form is the lower of indication or five percent	Yes / No